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No. _____

In The

Supreme Court of the United States

RICHARD ROLLINS, et al.,

Petitioners,

v.

FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Missouri Court Of Appeals, Eastern District

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In light of the First Amendment proscription against a civil court delving into church ecclesiastical matters and the internal governance of a church, may a civil court determine which individuals qualify as "members" of a Baptist church – eligible to vote as church "members" in an election for the Board of Directors of the church and eligible to be voted in as Board Members – where the church's by-laws set forth the membership and Board eligibility criteria in ecclesiastical terms, including the requirement that a "member" be in "good and regular standing" and that a "member" also "Believe in the Fatherhood of God and the Brotherhood of Man [and] Believe that Christ is the way the truth and the life" and where this Court and various appellate courts have uniformly held that the First Amendment deprives a civil court of jurisdiction to make church membership and governance determinations because such questions are inherently ecclesiastical in nature.

PARTIES TO THE PROCEEDINGS BELOW

Petitioners Charlet Clay, Press McDowell, and Loyse Clay served for years as administrative and spiritual leaders, deacons and officers of First Missionary Baptist Church of Ballwin, a Baptist church located in Ballwin, Missouri. Petitioner Richard Rollins acted as Church pastor beginning in 1986. Petitioners were named as the defendants, along with First Missionary Baptist Church, in a suit filed by Respondents purportedly on behalf of the Church in the Circuit Court of St. Louis County, Missouri. Petitioners filed a third-party claim in the case, individually and derivatively on behalf of First Missionary Baptist Church, to invalidate an April 13, 2002 election that purported to determine who would serve as members of the First Missionary Baptist Church Board of Directors.

After an initial appeal that upheld Petitioners' successful challenge to the April 13, 2002 Board election – in which the Missouri Court of Appeals held the April 13, 2002 Board election was null and void – Petitioners appealed the lower court's decision on remand that certified the results of an October 22, 2005 Board election. In connection with this second Board election, the lower court made a determination of which individuals qualified as Church "members" for voting purposes and Board eligibility purposes. Following an adverse ruling by the Missouri Court of Appeals rejecting Petitioners' challenges to the October 22, 2005 Church Board election, Petitioners sought transfer to the Missouri Supreme Court. The Missouri Supreme Court denied transfer on September 26, 2006.

PARTIES TO THE PROCEEDINGS BELOW – Continued

Respondents Marva Gaylor, Ernest Schell, Norma Clayton, Anthony Barnes, James Sheets, Gary Fields, Ernest Schell, George Fulgham, Leonard White, David Lyons and Kathryn Simmons were the plaintiffs who filed the derivative action on behalf of First Missionary Baptist Church of Ballwin. They were named as third-party defendants in the derivative third-party action filed by Petitioners that successfully invalidated the illegal April 13, 2002 Board election.

RULE 29.6 STATEMENT

The Petitioners are individuals who were sued individually and as leaders and officers of First Missionary Baptist Church of Ballwin, which church is incorporated as a Missouri Not-for-Profit Corporation and has no parent corporation.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Richard Rollins, Charlet Clay, Press McDowell, and Loyse Clay respectfully petition for a Writ of Certiorari to review the judgment of the Missouri Court of Appeals Eastern District and denial of transfer by the Missouri Supreme Court.

OPINIONS BELOW

The opinion of the Missouri Court of Appeals for the Eastern District of Missouri, which also reflects the Missouri Supreme Court's denial of transfer, is reported at 199 S.W.3d 823 and included in the Appendix at 1-12. The decisions of the St. Louis County Circuit Court adopting the Special Master's Report regarding the Church Board election procedures, ordering the Board election for the Church Board of Directors, and validating the election for the Church Board of Directors are unreported and are included in the Appendix at 13-34. The opinion of the Missouri Court of Appeals for the Eastern District of Missouri, in the first appeal reversing in part the declaratory judgment of the St. Louis County Circuit Court, is reported at 151 S.W.3d 846 (Mo.App.E.D. 2004).

JURISDICTION

The Missouri Supreme Court entered its denial of transfer on September 26, 2006. (App. 35). This Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS INVOLVED

The Establishment Clause and Free Exercise Clause of the First Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment of the United States Constitution, provide in relevant part, that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . . ."

STATEMENT OF THE CASE

This Petition raises the fundamentally and vitally important question of whether the Establishment Clause and Free Exercise Clause of the First Amendment of the United States Constitution are violated when a state court attempts to determine which individuals qualify as church "members" where that church, through its church by-laws, has defined "membership" purely in ecclesiastical terms. Throughout the state court proceedings and the appeals, Petitioners challenged – as violative of their religious rights, the rights of other bona fide members of First Missionary Baptist Church and the rights of the Church under the First Amendment – the circuit court's determination of who qualified as "members" of First Missionary Baptist Church for purposes of electing a Board of Directors. In reliance on United States Supreme Court precedent, Missouri state court precedent, and rulings from various other states, Petitioners argued that under the First Amendment, a civil court has no jurisdiction to decide who qualified as a member of a church because the determination is inherently an ecclesiastical question.

The St. Louis County Circuit Court and the Missouri Court of Appeals rejected Petitioners' challenges even though there was no dispute that the circuit court had to first make a determination of who qualified as "members" of First Missionary Baptist Church before proceeding with the adoption of election procedures and election protocol that culminated in the circuit court's certification of Board election results. Those membership determinations were made despite the fact that the Church By-Laws relied on by the courts couched the question of membership strictly in ecclesiastical terms and required that one not only had to be a "member" of the Church, but also was required to be in "good and regular standing" to be able to vote and be elected to the Church Board of Directors. In fact, Article II of the Church By-Laws expressly defined "Membership" in ecclesiastical terms by stating that:

> Membership of this church shall consist of such persons who have been duly and regularly received into its fellowship. All persons are eligible to membership in this church who are willing to accept in spirit the following principles: Believe in the Fatherhood of God and the Brotherhood of Man. Believe that Christ is the way the truth and the life. Belief in the clean heart, the unworldly mind, and the service of love for which Jesus taught and exemplified and acceptance of His Spirit and His teaching.

(App. 37).

Thus, as set forth more fully below, Petitioners respectfully urge this Court to grant this Petition for a Writ of Certiorari because of the fundamental and vitally important First Amendment issues raised and to resolve the conflict between the Missouri Court of Appeals' ruling,

established precedent of this Court, and the case law from various other state appellate courts.

FACTUAL BACKGROUND

First Missionary Baptist Church of Ballwin a/k/a First Baptist Church of Ballwin ("First Missionary Baptist Church") is an African-American Baptist Church that was founded in approximately 1832. (App. 72-73). The First Missionary Baptist Church congregation can be traced back to a group of slaves who where allowed to worship in an area that is now known as Ballwin, Missouri in St. Louis County. (App. 72-73). The land and place of worship was ultimately bequeathed to the group of slaves by the land owner. (App. 72-73). On November 27, 1961 First Missionary Baptist Church was reorganized under Chapter 355 of the Missouri Revised Statutes as a Not-for-Profit Benevolent Corporation. (App. 25).

On May 22, 2002, Respondents sued Petitioners – members, spiritual leaders, and officers of First Missionary Baptist Church – purportedly on behalf of First Missionary Baptist Church and also joined First Missouri Baptist Church as a defendant. (App. 2). In the suit, Respondents sought a declaration and an injunction to gain the right and authority to control and govern First Missionary Baptist Church and its assets, including its historical and financial records, bank books and bank accounts, and membership rosters. (App. 2). Prior to filing suit, on April 13, 2002, the Respondents organized a meeting purportedly to elect a Board of Directors of First Missionary Baptist Church and to wrestle control of the Church and the Church assets from Petitioners' Church

leadership group who had managed the affairs and property of the Church for years without objection prior to April 13, 2002. (App. 5).

After the suit was filed, Petitioners filed a third-party claim, derivatively on behalf of First Missionary Baptist Church, against Respondents. (App. 2). In that third-party petition, Petitioners sought a declaration that the April 13, 2002 Church Board election was a nullity and that Respondents did not have the authority to act in any capacity for the Church or to control any Church assets or records. (App. 2). Petitioners also sought a declaration that because they were the established and recognized Church leaders who managed the affairs of the Church prior to the April 13, 2002 Board election, all assets and records of the Church should be returned to Petitioners so that they could continue to fulfill their responsibilities of managing the Church affairs and property. (App. 2).

On October 30, 2003, in response to Petitioners' motion for summary judgment, the circuit court entered an order and judgment wherein the circuit court, *inter alia*, declared that the April 13, 2002 election was "null, void and held for naught" and ordered that all Church assets and records be returned to Petitioners, as leaders of the Church, for all legal, financial and other matters. (App. 2). On December 9, 2003, Respondents appealed these rulings. (App. 2).

In the first appeal, reported at *First Missionary Baptist Church of Ballwin v. Richard Rollins, et al.*, 151 S.W.3d 846 (Mo.App.E.D. 2004), the court of appeals ruled that the circuit court properly determined that the meeting and vote at the April 13, 2002 election were null and void. 151 S.W.3d at 850. However, the court of appeals

reversed the circuit court's determination that vested Petitioners with responsibility for managing the church affairs by concluding that such control could only be vested in a Board of Directors elected pursuant to the Missouri Not-for-Profit Corporations Statute, Chapter 355 of the Missouri Revised Statutes. The court of appeals remanded the case: "so that the trial court can order a meeting to be held according to sections 355.081.1 and 355.241.1(1) to properly elect a board of directors." 151 S.W.3d at 852.

Proceedings Following Court's Mandate and Remand

Following remand, Petitioners filed a response to a Motion by Respondents which sought to have the circuit court order a meeting of the Church to elect a Church Board of Directors. (App. 87-93). In that April 8, 2005 response, Petitioners took issue with the protocol suggested by Respondents for conducting such an election and meeting. (App. 88-89). Petitioners also challenged Respondents' suggestion that the circuit court had the authority to determine which individuals could be deemed Church "members" that would be qualified to vote for and serve as the Board of Directors of First Missionary Baptist Church. (App. 88-93). More specifically, Petitioners argued that if the circuit court were to make such membership and governance determinations, the circuit court would be acting in violation of the religious doctrine, customs, practices adopted by First Missionary Baptist Church and in violation of the First Amendment. (App. 88-93).

On April 11, 2005, the circuit court, *sua sponte* and over the objection of Petitioners, appointed a special master to facilitate the court of appeals' mandate requiring a meeting

and election of Board members. (App. 24). On June 3, 2005, Petitioners filed a Legal Memorandum again challenging the authority of the circuit court, the special master or any court to determine who would qualify as a "member" of the Church because such determinations, by their very nature and given their importance in speaking to "the core values of the Church", are matters that rested exclusively within the ecclesiastical authority of the Church. (App. 79-80). Petitioners also argued that any determination of membership would have to take into account certain religious customs of the church, including acceptance as a member through extension of the "Right Hand of Fellowship". (App. 80-83).[1]

On August 24, 2005, the Special Master issued a "Report of the Special Master". (App. 24-34). In his Report, the Special Master relied on "By-Laws" of First Missionary Baptist Church that were contested by Petitioners and concluded that: "The Articles of Incorporation and the Constitution and By-Laws (the "By-Laws"), although the validity of the latter of which is challenged by the defendants, do not state any specific qualifications for an individual to be eligible to serve as a director of the church. The By-Laws do state that ' . . . members of the board shall be **members of this church in good and regular standing.**' (By-Laws, Article II) [Emphasis

[1] One of those customs, called the "Right Hand of Fellowship", consists of the extending or withdrawing of the right hand as a testimony to the Church, the Pastor and the Deacons of the Church relating to the acceptance or rejection of an individual as a member of the local body of Christ. (App. 81-82). It is a practice of the Baptist Christian Faith based on biblical principles. (App. 81-82). The Right Hand of Fellowship is only extended to individuals after there has been certain scriptural study, a public testimony of faith and a public Baptism. (App. 81-82).

added]. Therefore, the Special Master finds that any member of the Church, as defined hereafter, is eligible to receive votes as a director". (App. 27). Article I, Section 3 of those Church By-Laws ("Rights of Members") also states that: "All members who are in good and regular standing may participate and vote in the transactions of this Church." (App. 39).

However, despite the fact that these By-Laws required that only members of the Church, who were also in "good and regular standing", may vote in Church matters and hold office as a board member (App. 39-40), the Special Master proceeded to determine who would qualify as "members" of First Missionary Baptist Church that would be eligible to vote on the directors and also eligible to hold office as a director of the Church. (App. 28-29). The Special Master made no determination as to who, as of August, 2005, was a member in "good and regular standing". Nor did the Special Master take into account the court recognized Church By-Laws, any of the customs, practices and religious doctrine of the Church, or the ecclesiastical authority of the Church leadership in deciding the question of "membership".

Instead, the Special Master suggested that the Circuit Court had authority to decide the question of membership under the Missouri Not-for-Profit Corporation Statute, Section 355.081.2, Mo.Rev.Stat. (2000). (App. 28). The Special Master then chose as "the most fair and equitable list of the members of the Church who are entitled to receive Notice and to vote" individuals who were listed in a "2002 Church Directory". (App. 28). Again, the Special Master made no finding that the persons included in that "2002 Church Directory" were "members" of the Church who were also in "good and regular standing" as of August,

2005 within the meaning of the By-Laws. (App. 28-29). The Special Master did not determine if any of the individuals listed in the 2002 Church Directory met any of the established membership qualifications of First Missionary Baptist Church.

The Special Master concluded that: "The record date of determining membership of the Church shall be January 1, 2002, which is found by the Special Master to be **fair and equitable** under the circumstances, and is likewise consistent with the aforesaid use of the 2002 Church Directory." (Emphasis added) (App. 29).

The Special Master also included in the definition of Church "members", who would be entitled to vote and hold office, the "children" of those included in 2002 Church Directory who had attained the age of 18 as of January 1, 2002, even if those children were not identified as members. (App. 29). The Special Master made no determination of whether any of the "children" of the individuals listed in the 2002 Church Directory met any of the other established membership qualifications of the First Missionary Baptist Church or whether those "children" were in "good and regular standing" of the Church, either as of January, 2002 or as of October, 2005.

The Special Master proceeded to delineate various other "election" procedures that would take place, including: (1) an "at-large, write-in election" to occur on Saturday, October 22, 2005 between noon and 4 p.m., at a St. Louis County public library, based on election ballots to be mailed no later than October 5, 2005; (2) proxy voting by having individuals sign "a notorized appointment form either personally or by an attorney-in-fact", the validity of

which "shall rest solely within the discretion of the Special Master"; (3) restricting those "members" entitled to vote by the ability to present "picture identification deemed valid by the Special Master" or, in the case of those "members" who turn 18 years of age as of January 1, 2002, the presentation of "a birth certificate and a valid form of picture identification"; (4) providing that any questions as to the voting procedure during the election process "shall be answered only by the Special Master, whose answer or decision shall then be dispositive"; (5) prohibiting communications between voters who may be in the voting room "other than with the Special Master or his staff"; (6) prohibiting any First Missionary Baptist Church members from acting as "poll-watcher" permitted to observe the election process; and (7) providing that "[N]o electioneering, including 'exit polls' shall be conducted on the library premises, including the parking lot." (App. 32-34).

On September 23, 2005, Petitioners filed objections to the Report of the Special Master. (App. 57-71). In these objections, Petitioners, *inter alia*, argued that the circuit court and the Special Master lacked jurisdictional authority under the First Amendment to decide who is and who is not a member of the Church. (App. 58-62). Petitioners also challenged the Special Master's reliance on a 2002 Church Directory of Active Families, which Petitioners argued did not constitute a list of "members" that were also in "good and regular standing". (App. 67-70). Petitioners pointed out the fact that the Church directory was nothing more than a phone directory of families who attended services at the Church, and noted that: "Many families participate in worship service and other activities (i.e. 'active families') but never become a member." (App. 67).

Petitioners also argued that such a membership determination – without considering the traditional, time-honored and biblically based Church membership criteria and without taking into account any changes in membership since 2002 – infringed upon the ecclesiastical authority of First Missionary Baptist Church, its leadership and bona fide Church members to make such determinations. (App. 61-63, 67-69).

On September 29, 2005, following a non-evidentiary hearing, the circuit court overruled Petitioners' objections and adopted the Report of Special Master recommending that an election be held on October 22, 2005 between noon and 4 p.m., which election was held at that time (the "October 22, 2005 Election"). (App. 22-23).

The October 22, 2005 "Election", Certification of "Election" Results, and Petitioners' Objections Thereto

On October 24, 2005, the Special Master filed his "Report of Election Procedure and Results". (App. 15-22). In that Report, the Special Master, *inter alia*, noted that 109 individuals cast ballots at the election held on Saturday, October 22, 2005. (App. 17). The Special Master also noted that of these 109 ballots, eighty-five individuals appeared in person and twenty-four persons voted via proxy. (App. 17). The Special Master also noted that of the total, eighteen "children" were permitted to cast ballots upon the presentation of proof they attained the age of 18 as of January 1, 2002. (App. 17). The Special Master noted that one of those individuals listed with the "children" in the 2002 Church Directory consisted of one fifty year-old individual who was not only permitted to vote as a member, but was ultimately elected as a member of the

Church Board of Directors. (App. 17). Another person listed as a "child" in the 2002 Directory was a ninety year-old individual who was permitted to vote by proxy. (App. 17).

The Special Masters tallied the top ten vote getters, and the Special Master recommended that Marva Gaylor, Kenneth Worsham, Kathy Simmons, David Grandison and James Sheets be duly elected as the Board of Directors of First Missionary Baptist Church. (App. 18).

On November 2, 2005, Petitioners filed objections to the October 22, 2005 Election, arguing that the election procedures and the election results were violative of Petitioners' rights and those of First Missionary Baptist Church and bona fide Church members, guaranteed under the Establishment Clause and the Free Exercise Clause of the First Amendment. (App. 42-56). Petitioners argued that the circuit court improperly made ecclesiastical determinations as to who qualified as "members" of First Missionary Baptist Church that would be entitled to vote in the election and serve as Board members. (App. 43-44). Petitioners also argued that such constitutional violations were established because the circuit court, through the Special Master, permitted non-members of the Church, as well as individuals who were not in "good and regular standing", to vote as Church members and to be elected as Board Members of the Church. (App. 43-44).

Additionally, Petitioners argued that individuals were permitted to vote at the October 22, 2005 Election and permitted to be elected as Board members even though they were not all "members" who were also in "good and regular standing" of First Missionary Baptist Church. (App. 47-54). In those objections, Petitioners pointed out

that certain individuals were permitted to vote as Church "members" simply because they were "children", if these "children" attained the age of 18 as of January 1, 2002, regardless of whether such individuals were deemed Church members under standards established by the Church or would qualify as members in "good and regular standing". (App. 48). They also challenged the fact that one of those "children" elected as a Board member was the fifty year-old child of a "member". (App. 50-51).

To challenge the eligibility of the individuals permitted to vote and who were ultimately voted in as Board members, and to address the other issues raised in the objections to the Special Master's election report, Petitioners requested an evidentiary hearing and a stay of the election results. (App. 13, 56). On November 28, 2005, the circuit court entered its order overruling Petitioners' objections to the elections and denying Petitioners' request for a stay. (App. 13-14). The circuit court also denied Petitioners' request for an evidentiary hearing. (App. 13-14).

On December 1, 2005, Petitioners appealed the circuit court's validation of the election to the Missouri Court of Appeals. (App. 1-12).

The Missouri Court of Appeals Opinion Affirming the Election

On appeal, Petitioners argued that the circuit court erred and violated Petitioners' rights, those of other bona fide church members, and the rights of First Missionary Baptist Church guaranteed under the First Amendment Establishment and Free Exercise Clauses by infringing on the ecclesiastical authority of a church and its leadership to decide who qualifies as "members" of the Church. (App. 5-6). In resolving Petitioners' Constitutional challenge, the

court of appeals first incorrectly suggested that Petitioners did not timely raise the constitutional question by stating: "At no time prior to the instant appeal did [Petitioners] argue that the action of the trial court with respect to the election of the board of directors violated their First Amendment rights." (App. 7). However, this conclusion is belied by various briefs made a part of the record reflecting that Petitioners raised their constitutional challenges early and often after Respondents, for the first time on remand, urged the circuit court to determine which individuals qualified as "members". (*See* App. 42-93).

Next, the court of appeals recognized that the circuit court decided the issue of church membership, but concluded that in so doing, the circuit court: (a) was not required to make any ecclesiastical determinations given the 2002 Church Directory; and (b) was not required to interpret any Church By-Laws to determine eligible voters and members eligible to be elected as Board members. (App. 6-9). The court of appeals reasoned that the circuit court's reliance on the 2002 Church Directory negated the need for the circuit court to make any ecclesiastical determinations despite Article II of the Church By-Laws that defined "Membership" as follows:

> Membership of this church shall consist of such persons who have been duly and regularly received into its fellowship. All persons are eligible to membership in this church who are willing to accept in spirit the following principles: Believe in the Fatherhood of God and the Brotherhood of Man. Believe that Christ is the way the truth and the life. Belief in the clean heart, the unworldly mind, and the service of love for which Jesus taught and exemplified and acceptance of His Spirit and His teaching.

(App. 37).

The court of appeals held that the circuit court had the authority to make membership determinations under Section 355.081.2, Mo.Rev.Stat. (2000). (App. 8). The court of appeals also concluded that "the [circuit] court was not making a decision as to who would govern the religious aspects of the Church, but instead was making a decision as to who was considered a 'member' for purposes of voting in an election to determine the board of directors to govern the not-for-profit corporation First Missionary Baptist Church of Ballwin and manage its assets." (App. 11).

However, in reaching these conclusions, the court of appeals wholly ignored the fact that the circuit court also granted "membership" status for voting purposes to the "children" of those persons listed in the 2002 Church Directory. The court of appeals also ignored the fact that nothing in the record established that the individuals listed in the 2002 Church Directory were individuals who were in "good and regular standing" of the Church at the time of the October 22, 2005 Election or even at the time the 2002 Church Directory was prepared.

In concluding that the circuit court acted properly in ignoring those membership requirements expressly set forth in the Church By-Laws, the court of appeals ignored the statutory directive set forth in Section 355.066(22) of the Missouri Not-for-Profit Corporation Statute which defines "membership" of a not-for-profit corporation as "the rights and obligations a member or members have pursuant to a corporation's articles, bylaws and this chapter."

On August 31, 2006, Petitioners filed for transfer to the Missouri Supreme Court. However, on September 26,

2006, the Missouri Supreme Court denied Petitioners' request for transfer. (App. 35).

REASONS FOR GRANTING PETITION

I. This Court Should Grant This Petition For A Writ Of Certiorari To Resolve The Fundamentally Important Question Of Whether The Establishment Clause And The Free Exercise Clause Of The First Amendment Permit A Civil Court To Decide Which Individuals Qualified As Church "Members" For The Purpose Of Electing A Church Board Of Directors Where The Church By-Laws Establish Ecclesiastical Standards For Determining Membership And Where The Missouri Court Of Appeals' Determination Conflicts With Precedent By This Court, And The Decisions Of Every Other State Court That Has Been Squarely Presented With The Issue, Holding That The Question Of Church Membership Is An Ecclesiastical Matter For Which A Civil Court Has No Jurisdiction To Decide Because Of The Constraints Placed On Civil Courts By The First Amendment.

By their very nature, the determinations of who is a "member" of First Baptist Missionary Baptist Church, which of those "members" are in "good and regular standing", who meet the established Church membership criteria, and which "members" may be elected as Directors of the Church – responsible for managing the Church's affairs and property – go to the very heart and core of the religious values, biblical teachings and customs of this nearly two-hundred-year-old Church. This Court, the Missouri courts, and various other courts have squarely held that the determination of who qualifies as a "member"

of a church is inherently an ecclesiastical matter that can and should only be made by a church and its recognized leadership. Under the First Amendment Establishment Clause and Free Exercise Clause, a civil court has no legal authority to make such determinations.

In determining which individuals qualified as "members" of First Missionary Baptist Church, eligible to vote as members in the October 22, 2005 Church Board Election, the circuit court imposed fundamental changes on the Church in how it, as a Christian religious organization, and its spiritual leaders go about deciding which individuals qualify as "members" of the Church who are also in "good and regular standing". Without question, such determinations must take into account religious customs, practices and biblical teachings.

In *Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Milivojevich,* 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976), this Court squarely held that, "'whenever the questions of **discipline, or of faith, or ecclesiastical role, custom, or law have been** decided by the highest church judicatures to which the matter has been carried, the legal tribunals **must** accept such decisions as final, and as binding on them, in their application to the case before them.'" 426 U.S. at 710, 96 S.Ct. at 2381, 49 L.Ed.2d 151 (emphasis added).

In so holding, the Court noted that: "religious freedom encompasses the 'power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" 426 U.S. at 721-722, 96 S.Ct. at 2386, 49 L.Ed.2d 151. The Court also noted that secular notions of "fundamental

fairness" cannot be borrowed from civil law and impressed upon internal church governance without violating the First Amendment. 426 U.S. at 714-715, 96 S.Ct. at 2383, 49 L.Ed.2d 151.

Since this Court's *Serbian Eastern Orthodox Diocese* decision, the courts in both Missouri and in various other states have interpreted *Serbian Eastern Orthodox Diocese* as holding that questions regarding church "membership" are inherently ecclesiastical matters that are protected from interference by civil courts under the First Amendment.

In *Rolfe v. Parker*, 968 S.W.2d 178 (Mo.App.W.D. 1998), the Court reviewed the lower court's dismissal of a suit seeking a preliminary injunction, declaratory relief and an accounting brought by one church faction against a separate faction within the church. One of the two competing groups argued that the determination of whether the apostles or an administrative committee constituted the authority of the church was an ecclesiastical question over which the circuit court did not have subject matter jurisdiction.

In resolving this question, relying on *Serbian Eastern Orthodox Diocese*, the court in *Rolfe* held that 'the question of who was authorized to act in the priesthood position of apostle was not within the civil court's subject matter jurisdiction as such determination 'concerns doctrine, creed or form of worship of the church ' [citation omitted] '**The determination of who are qualified members of the church is an ecclesiastical matter.**'" 968 S.W.2d at 184. (Emphasis added).

Various other Missouri courts have reached the same conclusion. *See Brady v. Pace*, 108 S.W.3d 54, 61 (Mo.App.S.D.

2003) ("We remain convinced that this case involves termination of Scott's membership in the Church for alleged grounds (whether true or false) that related to the appropriateness of his continued membership therein. As such, the trial court lacked subject matter jurisdiction"); *Fast v. Smyth*, 527 S.W.2d 673, 676 (Mo.App. 1975) (Wherein the court, in upholding the exclusion from a church vote individuals who did not qualify as "members", noted that "the determination of who are qualified members of a church is an ecclesiastical matter" that falls within "the exclusive jurisdiction of the ecclesiastical tribunals"). *See also Murr v. Maxwell*, 232 S.W.2d 219, 234 (Mo.App. 1950) ("Under the law, questions concerning expulsion of members are purely ecclesiastical questions").

Courts in other states have likewise interpreted *Serbian Eastern Orthodox Diocese* as holding that membership determinations are ecclesiastical matters that a civil court has no authority to resolve. In *Lott v. Eastern Shore Christian Center*, 908 So.2d 922 (Ala. 2005), *cert. denied*, ___ U.S. ___, 126 S.Ct. 416, 163 L.Ed.2d 317 (2005), the Alabama Supreme Court reviewed the trial court's refusal to enter a TRO and grant other relief following the decision by church leadership to remove certain individuals as members of the church. 908 So.2d at 925. In denying the TRO, the trial court noted: "'But I can tell you that this judge isn't going to get involved in the government of a church, because I don't think I have any jurisdiction over who is a member, or not a member . . . " *Id.*

In reliance on *Serbian Eastern Orthodox Diocese* and various other state and federal court decisions applying its principles, the Alabama Supreme Court affirmed the trial court's refusal to exercise jurisdiction by holding that: "In seeking to preempt church discipline . . . , the motion for a

TRO essentially invited the court to become embroiled in the merits of a 'fundamental ecclesiastical concern' with which courts must have nothing to do, namely, 'determining who is and who is not [a Church] member.' [citation omitted]". *Id.* at 930-931.

In *Lott*, the Alabama Supreme Court relied heavily on *Burgess v. Rock Creek Baptist Church*, 724 F.Supp. 30 (D.D.C. 1990), another case that applied this Court's holding in *Serbian Eastern Orthodox Diocese*. In *Burgess*, the plaintiff sought to challenge the termination of his church membership after forty years. *Id.* at 31. The district court entered summary judgment in favor of the church on the plaintiff's declaratory judgment suit which sought a determination that she was a "Church member in good standing". *Id.* The plaintiff was removed as a member of the church because when the church minister departed, "the plaintiff and several RCB Church members assisted him in becoming established in a new church. RCB Church's new Pastor and the Secretary construed the plaintiff's actions in assisting the former minister as a resignation of her membership and decided to transfer her membership to the new church." *Id.*

In justifying its determination that the First Amendment precluded the court from granting the plaintiff declaratory relief, the court first noted that "if the defendants' decision to terminate the plaintiff's membership was a matter of ecclesiastical cognizance, the First Amendment and Supreme Court case law preclude this Court from acting upon the plaintiff's allegation that defendants 'arbitrarily and capriciously' deprived her of her RCB Church membership." *Id.* at 33.

The court held that:

> In short, the Court is precluded from reviewing the fairness or correctness of the defendants' decision to terminate the plaintiff's membership. "By its very nature, the inquiry which [the plaintiff] would have [the Court] undertake into the circumstances of [her termination] plunges the inquisitor into a maelstrom of Church policy, administration, and governance. It is an inquiry barred by the Free Exercise Clause.'"

Id. at 34.

A similar result was reached in *Hawkins v. Friendship Missionary Baptist Church*, 69 S.W.3d 756 (Tex.App. 2002). In *Hawkins*, the church and individuals sought an injunction to prohibit the deacons of the church from interfering with the plaintiff serving as pastor of the church. The deacons argued that the court had no authority or legal capacity to allow such a suit because it concerned ecclesiastical decisions that were to be made by the duly empowered board of deacons of the church. *Id.* at 757.

The trial court denied the deacons' motion and granted the injunction, concluding that such relief was proper because the church "'is a congregational form of church government, [and] that the congregation, through its meeting of church membership is the governing authority.'" *Id.*

The court, relying on *Serbian Eastern Orthodox Diocese*, held that the determinations were ecclesiastical in nature such that the trial court was without jurisdiction. *Id.* at 759. In so holding, the court noted:

> [I]t is undisputed that the Deacons had some position of authority in the Church and the fact

> that the Church is congregational does not establish what powers, if any, the Deacons held within the Church's congregational form of government, under what circumstances those powers could have been revoked or overridden, if at all, by the congregation, or whether any such conditions were met in this case. Without governing Church documents which could be construed in purely secular terms, the power struggles between the Church, Deacons and Pastor cannot be resolved based on neutral principals of law, but apparently only by delving into religious doctrine of polity. Because we therefore agree with the Deacons that this dispute involves an ecclesiastical matter, we sustain their first point of error and need not address the second point of error challenging the injunction on the merits.

Id. at 759.

Even the Missouri Court of Appeals in this case recognized *Serbian Eastern Orthodox Diocese*'s proscription against excessive government entanglement in such ecclesiastical matters, but suggested its application was limited based on factual distinctions. In fact, the court of appeals concluded:

> We agree with [Petitioners] that the *Serbian* case clearly provides certain autonomy to a church to govern itself under the First Amendment. The United States Supreme Court determined that interference by the court in an internal church dispute inherently entails questioning the procedures the church governing body must follow pursuant to canon or ecclesiastical law. 426 U.S. at 713, 96 S.Ct. at 2382. This is the type of inquiry prohibited by the First Amendment. *Id.* Allowing an inquiry of this type would 'undermine

> the general rule that religious controversies are not the proper subject of civil court inquiry.' *Id.* However, the court in *Serbian* was faced with the consideration of issues significantly distinct from those in the present case.

(App. 9-10).

In the court of appeals' view, those factual distinctions consisted of its conclusion that the circuit court: (a) was not required to make any ecclesiastical determinations given the 2002 Church Directory; and (b) was not required to interpret any Church By-Laws to determine eligible voters and members eligible to be elected as Board members. The court of appeals reasoned that the circuit court's reliance on the 2002 Church Directory negated the need for the circuit court to make any ecclesiastical determinations. (App. 6-9).

However, the court of appeals' reasoning does not comport with *Serbian Eastern Orthodox Diocese* and the cases interpreting *Serbian Eastern Orthodox Diocese.* Those cases suggest the determination of "membership" of a church is inherently ecclesiastical in nature. As noted by this Court in *Serbian Eastern Orthodox Diocese*:

> "'The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent

> and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.'"

426 U.S. at 711, 96 S.Ct. at 2381, 49 L.Ed.2d 151.

Moreover, because the issues raised by the October 22, 2005 Election relate to governance of the Church in the form of control of Church affairs and Church property, the First Amendment deprived the circuit court of jurisdiction to decide those issues. Thus, the circuit court and the court of appeals acted in excess of their jurisdiction and in violation of Petitioners' rights, as well as the rights of the Church and bona fide Church members, by purporting to determine who qualified as voting "members" of the Church eligible to serve as Church Board members.

Additionally, the court of appeals' determination that the 2002 Church Directory negated any need for an ecclesiastical determination and that it represented "the most fair and equitable list of the members of the Church who are entitled to receive Notice and to vote" did not justify the civil court's membership determination. As this Court held in *Serbian Eastern Orthodox Diocese*, secular notions of "fundamental fairness" cannot be borrowed from civil law and impressed upon internal church governance without violating the First Amendment: "Indeed, it is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether

or not rational or measurable by objective criteria. Constitutional concepts of due process, involving secular notions of 'fundamental fairness' or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance." 426 U.S. at 714-715, 96 S.Ct. at 2383, 49 L.Ed.2d 151. *See also Everson v. Bd. of Educ.*, 330 U.S. 1, 8-11, 67 S.Ct. 504, 91 L.Ed. 711 (1947) ("whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them").

The court of appeals concluded that the circuit court had the authority to make membership determinations under Section 355.081.2, Mo.Rev.Stat. (2000). The court of appeals also concluded that "the [circuit] court was not making a decision as to who would govern the religious aspects of the Church, but instead was making a decision as to who was considered a 'member' for purposes of voting in an election to determine the board of directors to govern the not-for-profit corporation First Baptist Church of Ballwin and manage its assets." (App. 11).

However, this distinction by the court of appeals ignored the fact that "membership" in the Church and "membership" for the purposes of voting for a Church Board of Directors were one and the same – only individuals deemed to be Church members, fulfilling the By-Law requirements of membership in good and regular standing, would also be deemed voting members under the Church By-Laws and under Section 355.081.2. Section 355.066(22) of the Missouri Not-for-Profit Corporation Statute recognized the constitutional right of a church, incorporated as

a not-for-profit corporation, to establish and limit membership rights and voting rights in church by-laws. Section 355.066(22) expressly defines "membership" of a not-for-profit corporation as "the rights and obligations a member or members have pursuant to a corporation's articles, bylaws and this chapter."

Thus, the circuit court's determination of membership was a matter that is inherently ecclesiastical in nature and in derogation of the rights conferred by both the Church By-Laws and by the Establishment Clause and Free Exercise Clause of the First Amendment.

More fundamentally, despite the court of appeals' suggestion to the contrary, the circuit court effectively made an ecclesiastical determination of membership. The circuit court elevated children to the status of "members" who were also deemed in "good and regular standing". The individuals listed in 2002 Church Directory were automatically treated as members, "in good and regular standing" as of October, 2005, in the absence of evidence that those individuals were even affiliated with the Church by the time of the October 22, 2005 election. Petitioners vigorously disputed whether those individuals qualified as members that were in "good and regular standing". They also challenged the 2002 Church Directory as being nothing more than a telephone directory of active families, some of whom may have attended worship services and participated in other Church activities, but not joined as members. (App. 67-70).

Petitioners also challenged the membership determinations and the corresponding election on the grounds that the circuit court permitted various individuals who disassociated themselves from First Missionary Baptist

Church to vote as "members" in "good and regular standing". (App. 47-54). Such individuals included many of the Respondents, who formed and worshiped under a new Church called "Remnants First Baptist Church". (App. 52). Thus, by rejecting Petitioners' argument that the individuals who voted in the October 22, 2005 Election did not qualify as "members", the circuit court went way beyond simply relying on a 2002 listing in determining voting "members".

Without question, individuals who, for whatever reason, had ceased any active or regular role in Church affairs, or who had elected to join other churches as members after 2002, or who were never members, should not have been permitted to vote as members and automatically be deemed in "good and regular standing" as of October 22, 2005 in an election that would have significant ramifications on the future of First Missionary Baptist Church. By conferring individuals with the status of "members" that were also deemed in "good and regular standing" as of October 22, 2005, the circuit court effectively concluded that those individuals met the ecclesiastical requirements for membership set forth in the Church By-Laws and thereby made an ecclesiastical determination of membership.

The circuit court's augmentation of the Church By-Law definition of membership to include children, and its grant of membership status to individuals who disassociated themselves from the Church, suggest that the circuit court did much more than simply apply neutral principles of law to decide the membership question. Instead, the circuit court arbitrarily created membership standards that expressly contravened the Church By-Laws. Such arbitrariness, even if based on purported principles of fairness, violates the First Amendment. *See Serbian Eastern Orthodox Diocese*, 426 U.S. at 714-715, 96 S.Ct. at

2383, 49 L.Ed.2d 151 ("secular notions of 'fundamental fairness' cannot be borrowed from civil law and impressed upon internal church governance without violating the First Amendment").

By permitting such individuals who either did not qualify as "members" or who were not "in good and regular standing" to vote on, and be voted as, Directors of the Church, the circuit court has made what amounts to a membership determination, either on prohibited ecclesiastical grounds or on grounds that ignored the ecclesiastical standards adopted by the Church for conferring membership status. Either way, the circuit court and court of appeals determinations infringe upon Petitioners' rights guaranteed by the First Amendment.

Consequently, by making what amounts to a church membership determination – that by its very nature is inherently ecclesiastical – and by ignoring the ecclesiastical standards that govern whether individuals qualified as members who were also in "good and regular standing", the circuit court and the court of appeals acted well in excess of their jurisdiction and in violation of Petitioners' rights, and those of bona fide members of the Church, established under the Establishment Clause and Free Exercise Clause of the First Amendment. Neither the circuit court nor any special master should be permitted to decide who is or who is not a Church "member". Nor should any civil court be permitted to ignore the religious customs and biblical criteria employed by the Church and Church leadership in making such membership determinations. By so doing, the circuit court acted in excess of its jurisdiction and violated Petitioners' constitutional rights as well as the rights of other bona fide church members.

CONCLUSION

In the instant case, the circuit court has crossed the careful line of demarcation that separates Church and State by purporting to determine which individuals properly qualified as "members" of First Missionary Baptist Church as of October 22, 2005, eligible to vote as "members" that were in "good and regular standing", and eligible to be voted on as Directors of the Board of First Missionary Baptist Church. Such a determination is an ecclesiastical one that is outside of a civil court's authority to make.

Consequently, this Court should grant this Petition for Writ of Certiorari to resolve the conflict between the Missouri Court of Appeals' determination and this Court's opinion in *Serbian Eastern Orthodox Diocese*. As demonstrated above, this Petition raises issues of fundamental religious and constitutional rights under the First Amendment. No religious right is more sacred under the First Amendment than the fundamental right of a church and its ecclesiastical authority to establish church membership criteria and to decide which individuals have fulfilled those criteria so as to be recognized as church "members" who can be deemed in "good and regular standing".

The Missouri Court of Appeals has now held that a circuit court has the right to make church membership determinations so long as the church is incorporated as a Not-for-Profit Corporation – all without any consideration of the membership criteria established in a church's by-laws and without the benefit of any evidentiary hearing. In its view, such statutory authority exists even though

United States Supreme Court authority and that of courts in various states have held to the contrary.

The broad reach of such a holding to other religious organizations currently incorporated as Not-for-Profit Corporations in Missouri opens the door for circuit courts in Missouri to become excessively entangled in such religious controversies where the dispute involves who qualifies as voting members of a church. Such precedent would permit circuit courts to dictate membership composition, regardless of what membership criteria a church establishes in its by-laws, thereby granting civil courts a license to effectively reform and remake such religious organizations. Such church reformation by a civil court constitutes a violation of the First Amendment.

The disposition of this case will have a significant impact on the Church leadership and the future of this nearly two-hundred-year-old African American Baptist Church. This conflict should be resolved by this Court granting this Petition for Writ Certiorari to address these vitally important religious and constitutional questions. The First Amendment demands nothing less.

Respectfully submitted,

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199 S.W.3d 823

FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN, et al., Respondents,

v.

Richard ROLLINS, et al., Appellants.

No. ED 87320.

Missouri Court of Appeals,
Eastern District,
Division One.

June 30, 2006.

Motion for Rehearing and/or Transfer to Supreme Court Denied Aug. 17, 2006.

Application for Transfer Denied Sept. 26, 2006.

Ronald A. Norwood, St. Louis, MO, for appellant.

Gregory F. Quinn, Manchester, MO, for respondent.

CLIFFORD H. AHRENS, Judge.

Richard Rollins, Press McDowell, Loyse Clay, and Charlet Clay (collectively referred to herein as the "McDowell representatives") appeal the judgment of the trial court certifying election results and appointing a board of directors for the First Missionary Baptist Church of Ballwin, a/k/a First Baptist Church of Ballwin ("the Church"). The McDowell representatives claim the trial court erred in entering its judgment because it exceeded its authority and jurisdiction in doing so. The McDowell

representatives also claim the judgment was against the weight of the evidence. Finding no error, we affirm.[1]

The present case involves a dispute which arose as a result of an election of the Church board of directors, held on April 13, 2002. The purported board of directors terminated the control of the McDowell representatives. Ultimately this board of directors, consisting of Marva Gaylor, Norma Clayton, Anthony Barnes, James Sheets, Gary Fields, Ernest Schell, George Fulgham, Leonard White, David Lyons, and Kathryn Simmons (collectively referred to herein as the "Gaylor representatives"), filed a petition for declaratory judgment and injunctive relief. They sought a declaration as to who had the right and authority to govern the Church and control its assets. The McDowell representatives filed a third-party petition against the elected board of directors and other members of the Church, the Gaylor representatives, seeking a declaration that the April 13, 2002, election was void. The trial court granted the McDowell representatives' motion for partial summary judgment, finding that the April 13, 2002, election was null and void. The court reinstated the McDowell representatives as the leaders of the Church and dismissed the remaining claims and issues with prejudice. The Gaylor representatives appealed the trial court's judgment, and this court reversed and remanded the court's decision in *First Missionary Baptist Church of Ballwin v. Rollins*, 151 S.W.3d 846 (Mo.App.2004) ("*First Missionary I*"). In *First Missionary I*, our court determined that the April 13, 2002, election was invalid. Because there

[1] Respondents filed a motion to supplement the legal file, pursuant to Missouri Supreme Court Rule 81.12(e). The motion was taken with the case. Respondents' motion is granted.

was no evidence of a valid election, the court erred in granting summary judgment in favor of the McDowell representatives because they failed to show that they are the board of directors of the church. Thus, this court reversed the judgment of the trial court and remanded the cause for the trial court to order a meeting pursuant to sections 355.081.1 RSMo (2000)[2] and 355.241.1(1) to properly elect a board of directors for the Church.

The Gaylor representatives subsequently filed a motion asking the court to order a meeting and election of a board of directors. The trial court appointed a special master. The special master provided the court with a report, which recommended that a meeting would be impractical and a formal election by written ballot would be an appropriate alternative remedy pursuant to section 355.081. The special master suggested an at-large, write-in election, and noted that pursuant to section 355.081.2, the court could determine members eligible to vote. The special master concluded that the 2002 Directory contained the most fair and equitable list of members, as it was the last published list prior to commencement of litigation in the matter. The court adopted the suggestions of the special master, over the objections of the McDowell representatives, and ordered the election by written ballot to proceed. A report of the election procedure and results was submitted by the special master, indicating that a board of directors had been elected. The board of directors consisted of Marva Gaylor, Kenneth Worsham, Kathy Simmons, David Grandison, and James Sheets[3]. The court

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[2] All further statutory references are to RSMo (2000).

[3] Gaylor, Sheets, Simmons, and Worsham are all named respondents in the present appeal.

certified the election results and appointed the board of directors. The court overruled the objections of the McDowell representatives and denied their motion to vacate the certification of the results and for evidentiary hearing. The McDowell representatives now appeal.

The McDowell representatives assert three points on appeal. Points one and three concern the court's determination of membership. Point two involves a claim regarding the failure of the trial court to follow the mandate from this court in *First Missionary I*. Because point two is a jurisdictional issue, we address it first.

In their second point on appeal, the McDowell representatives claim the trial court acted in excess of its jurisdiction by ordering an election that did not take place at a "meeting" of the members of the Church as required by our court's mandate in *First Missionary I*.

"The jurisdiction of the trial court on remand is determined by the mandate and opinion of the appellate court." *Outcom, Inc. v. City of Lake St. Louis*, 996 S.W.2d 571, 574 (Mo.App.1999) (citations omitted). The trial court is limited to entering a judgment which conforms to the mandate of the appellate court. *Id.* The court cannot depart from the judgment of the appellate court, and proceedings contrary to the mandate are null and void. *Id.*

As previously noted, in *First Missionary I*, this court reversed the grant of summary judgment in favor of the McDowell representatives and declared the April 13, 2002, election invalid. Our court held that, "[t]he judgment of the trial court is reversed and the cause is remanded so that the trial court can order a meeting to be held according to sections 355.081.1 and 355.241.1(1) to properly elect

a board of directors." *First Missionary Baptist Church of Ballwin*, 151 S.W.3d at 852.

Section 355.241.1(1) provides that the circuit court may order a meeting to be held on application of "any member or other person entitled to participate in an annual or regular meeting. . . . " Pursuant to section 355.081.1, where such a meeting is impractical or impossible, the circuit court may order a written ballot or other vote be conducted in a manner the court finds to be fair and equitable under the circumstances.

Here, the McDowell representatives focus upon the court's use of the word "meeting" in *First Missionary I*. However, they ignore the language referring to section 355.081.1, which authorizes a written ballot or other form of obtaining votes of members where a meeting of a corporation is impractical. Given the particular circumstances of the present case, in which no board of directors was in place to dictate the time, place, or manner in which a meeting would occur to hold an election, the finding of the special master that a meeting was impractical was not unreasonable. The court in *First Missionary I* clearly stated that a meeting was to be ordered according to sections 355.081.1 and 355.241.1(1). Pursuant to section 355.081.1, the court ordered an election by written ballot, and this was within the mandate of the court in *First Missionary I*, and therefore, within the trial court's jurisdiction. Point denied.

In their first and third points on appeal, the McDowell representatives challenge the court's determination of who constituted a "member" eligible to vote in the election. In the first point, the claim focuses upon the court's improper infringement upon the First Amendment rights of the

McDowell representatives in determining who was a "member" for purposes of voting. The third point on appeal concerns the evidentiary basis for this decision. Because we discuss the evidence of membership within our analysis of the First Amendment claim, we address both points together.

The special master determined that an at-large, write-in election would be fair. Pursuant to section 355.081.2, the special master noted that the court could determine who the members are for purposes of notice of the meeting and eligibility to vote in the election. In his report, which was adopted by the court, the special master noted that the 2002 Directory of the Church would be the most fair and equitable list of members because it was the last published list prior to commencement of the litigation. The McDowell representatives argue that the determination by the court regarding who was a member, and therefore eligible to vote in the election, constituted an improper infringement on the ecclesiastical authority of the Church to decide who qualifies as a member.

The First Amendment does not preclude the court's involvement in church disputes where the issue is one which deals purely with a religiously neutral civil law. *State ex rel. Gaydos v. Blaeuer*, 81 S.W.3d 186, 192 (Mo.App.2002); (citing *Gibson v. Brewer*, 952 S.W.2d 239, 246-47 (Mo. banc 1997); *Weaver v. African Methodist Episcopal Church, Inc.*, 54 S.W.3d 575, 581 (Mo.App.2001)). "Courts may [ ] exercise jurisdiction in disputes having no issues of religious doctrine, policy and practice so long as courts utilize a neutral-principles-of-law approach and judges do not become entangled in questions which are essentially religious." *Id.* at 193;

(citing *Jones v. Wolf*, 443 U.S. 595, 604, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979)) (additional citation omitted).

Both the present case and *First Missionary I* concern the election of a board of directors for a not-for-profit corporation. At no time prior to the instant appeal did the McDowell representatives argue that the action of the trial court with respect to the election of the board of directors violated their First Amendment rights. Instead, the McDowell representatives availed themselves of the court, seeking declaratory and injunctive relief with respect to the purported election of a board of directors which took place on April 13, 2002. The McDowell representatives' third-party claim repeatedly cited sections of the not-for-profit corporation law contained in Chapter 355 of the Missouri Revised Statutes as support for its allegations and request for relief concerning the purported election of a new board of directors.

The court in *First Missionary I* concluded that there was no evidence a board of directors was properly elected, and therefore, summary judgment was improper. *First Missionary Baptist Church of Ballwin*, 151 S.W.3d at 851. This court remanded the cause for an election of such board of directors. *Id.* at 852. Pursuant to section 355.081.1, and consistent with the mandate of our court in *First Missionary I*, the trial court appointed a special master and approved the recommendation of the special master to hold an election by written ballot.

A corporation is required to have a board of directors to manage its affairs, pursuant to section 355.316. On remand, the trial court considered only the issue of the election of a board of directors for the not-for-profit corporation of First Baptist Church of Ballwin. It did not make

any determination regarding the government of the ecclesiastical affairs of the Church. The Church provided for its own ecclesiastical government in its constitution and by-laws, which were in place prior to the April 13, 2002, election, and the trial court did not interpret the constitution and by-laws in its determination regarding the election of the board of directors of the corporation.

Furthermore, the court did not consider any religious doctrine or ritual in its application of the not-for-profit statutes. Section 355.081.2 authorized the court to determine who the members were for purposes of voting. The court, pursuant to the report of the special master, determined that the 2002 church directory contained the most fair and equitable list of members for purposes of notice and voting because it was the last published list prior to commencement of litigation. Thus, the court looked only to a published list of members, which did not require any ecclesiastical contemplation. Therefore, the trial court did not improperly infringe upon the McDowell representatives' First Amendment rights.

Moreover, the decision of the trial court regarding who was considered a member was supported by the evidence. Richard Rollins, the pastor of the Church, testified that he used the "church roll" to determine who to send a certain document to. He described the "church roll" as a list of all the current members prior to the April 13, 2002, meeting. Rollins testified that this list was referred to as the church directory. Rollins also stated that in order to determine how many members there were in the Church, he would have to look at the church directory. Charlet Clay, the Church's administrative assistant, also testified that the church directory contains the categorization of "For the

group of: Families – Active." She stated that this means "you're an active member."

As a result of this testimony, there was clearly sufficient evidence to support the court's finding that the 2002 church directory contained a list of members eligible to vote in the election. Both Rollins and Clay acknowledged that the directory was a list of members of the Church, and Rollins specifically referred to the directory as a list of members prior to the April 13, 2002, meeting, which prompted the litigation. Therefore, the court's decision to use the 2002 church directory as a list of members eligible to vote was supported by sufficient evidence, and was not erroneous.

The McDowell representatives rely primarily upon *Rolfe v. Parker*, 968 S.W.2d 178 (Mo.App.1998) and *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976) as support for their argument that the determination of membership is an ecclesiastical one which may not be made by the court. Both cases are distinguishable.

We agree with the McDowell representatives that the *Serbian* case clearly provides certain autonomy to a church to govern itself under the First Amendment. The United States Supreme Court determined that interference by the court in an internal church dispute inherently entails questioning the procedures the church governing body must follow pursuant to canon or ecclesiastical law. 426 U.S. at 713, 96 S.Ct. at 2382. This is the type of inquiry prohibited by the First Amendment. Id. Allowing an inquiry of this type would "undermine the general rule that religious controversies are not the proper subject of civil court inquiry." *Id.* However, the court in *Serbian* was

faced with the consideration of issues significantly distinct from those in the present case.

In *Serbian*, a bishop was removed from a diocesan church, which was part of a hierarchical church structure. The Illinois Supreme Court determined that the proceedings to remove the bishop were defective under the regulations of the "Mother Church," within the hierarchical structure, and therefore, the removal was invalid. The United States Supreme Court granted certiorari to consider whether the Illinois Supreme Court improperly interfered with the decision of a hierarchical church in violation of the First and Fourteenth Amendments. The United States Supreme Court held that the Illinois Supreme Court impermissibly rejected the decisions of the "highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute. . . . " 426 U.S. at 708, 96 S.Ct. at 2380. The Illinois Supreme Court also impermissibly substituted its own interpretation of the constitutions of the churches for that of the "highest ecclesiastical tribunals in which church law vests authority to make that interpretation." 426 U.S. at 721, 96 S.Ct. at 2386.

The First Amendment requires courts to decide property disputes within a church without resorting to underlying disagreements as to religious doctrine. *Serbian*, 426 U.S. at 710, 96 S.Ct. at 2381. In the present case, we are not faced with a decision regarding the internal removal of a religious leader within a hierarchical church as the court was in *Serbian*. Instead, pursuant to the appellate mandate, the trial court ordered an election of a board of directors for a not-for-profit corporation, pursuant to sections 355.081.1 and 355.241.1(1). Here, the court did not resolve the dispute regarding the election of a board of directors of the Church by delving into religious

matters or by interpreting the constitution of the Church. Instead, the trial court considered only the 2002 church directory which contained a list of members to make a determination as to who would be entitled to notice and opportunity to vote in the election.

The McDowell representatives also point to *Rolfe v. Parker* to support their assertion that the court impermissibly decided ecclesiastical matters. In *Rolfe*, a group filed a petition against another faction within a church seeking an injunction and declaratory relief. Essentially, the dispute concerned two groups within the church each of whom wished to have "apostles" of their choosing on the committee that managed the ecclesiastical and clerical affairs of the church. The trial court dismissed the petition because it concluded that the issue of who constituted the "authority" of the church was an ecclesiastical matter not to be considered by the civil courts. 968 S.W.2d at 179. The trial court determined that the apostles effectively governed the church, and therefore the determination as to who was authorized to be an apostle was an ecclesiastical one, not within the jurisdiction of the civil court. *Id*, at 181. The court of appeals affirmed this decision. *Id.* at 185.

Again, the present case is distinguishable. The court in *Rolfe* was faced with an issue of who was authorized to govern the church in ecclesiastical and clerical matters. Here, the court did not delve into ecclesiastical matters in its decision as to the procedure for the election. Moreover, the court was not making a decision as to who would govern the religious aspect of the Church, but instead was making a decision as to who was considered a "member" for purposes of voting in an election to determine the board of directors to govern the not-for-profit corporation First Baptist Church of Ballwin and manage its assets.

Here, the court considered only the application of the not-for-profit corporation laws, and the requirement therein that the corporation have a board of directors to manage its affairs. In doing so, the court did not delve into matters of religious doctrine, ritual, or practice. Instead, the court ordered an election by written ballot, as authorized under section 355.081.1. Pursuant to section 355.081.2, the court was authorized to determine who the members were for purposes of voting. The court did not consider any religious ritual or doctrine, but instead used the Church directory, which Rollins acknowledged was a list of the members of the Church, to determine who was eligible to vote in an election of the board of directors. As a result of the foregoing, we do not believe the trial court improperly involved itself in ecclesiastical matters in resolving a dispute between the parties regarding the election of the board of directors of the Church.

The judgment of the trial court is affirmed.

MARY K. HOFF, P.J. and PATRICIA L. COHEN, J., concurs.

IN THE CIRCUIT COURT,
ST. LOUIS COUNTY, MISSOURI

STATE OF MISSOURI
COUNTY OF ST. LOUIS

FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN, ET AL	CAUSE #02CC-002033(G)
VS	DIVISION 39
ROLLINS, RICHARD, ET AL	NOVEMBER 28, 2005
DEFENDANTS	

JUDGMENT AND ORDER

(Filed Nov. 28, 2005)

CAUSE CALLED FOR HEARING ON MOTIONS OF THE PARTIES. PARTIES APPEAR BY THEIR RESPECTIVE ATTORNEYS.

THE COURT HAVING TAKEN JUDICIAL NOTICE OF THE FILE AND ARGUMENTS OF THE PARTIES DOES HEREBY RULE AS FOLLOWS:

DEFENDANTS/THIRD PARTY PLAINTIFFS MOTION TO STAY THE COURT'S OCTOBER 24, 2005 ORDER AND OBJECTIONS TO MOTION TO PAY FUNDS HELD IN COURT REGISTRY TO BOARD OF DIRECTORS FILED ON NOVEMBER 2, 2005, THE MOTION IS HEARD AND **DENIED**.

DEFENDANTS/THIRD PARTY PLAINTIFFS OBJECTIONS TO OCTOBER 22, 2005 ELECTION AND ELECTION RESULTS AND MOTION TO VACATE COURT'S OCTOBER 24, 2005 ORDER ADOPTING ELECTION

RESULTS AND REQUEST FOR EVIDENTIARY HEARING FILED ON NOVEMBER 2, 2005, THE OBJECTIONS AND MOTION ARE HEARD AND **DENIED**.

MOVANTS MOTION TO PAY FUNDS HELD IN COURT REGISTRY TO BOARD OF DIRECTORS FILED ON NOVEMBER 22, 2005 IS HEARD AND **GRANTED**.

CC: G. QUINN/ M. MARGO/ R. NORWOOD/ H. MENEES

SO ORDERED,

/s/ Patrick Clifford
JUDGE PATRICK CLIFFORD
ASSOCIATE CIRCUIT JUDGE

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

IN THE CIRCUIT COURT OF
THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN, a/k/a FIRST BAPTIST CHURCH OF BALLWIN, etc., Plaintiff, vs. RICHARD ROLLINS, et al., Defendants and Third-Party Plaintiffs, vs. ANTHONY BARNES, et al., Third-Party Defendants.	Cause No. 02CC-002033 Division No. 39

REPORT OF ELECTION PROCEDURE AND RESULTS

(Filed Oct. 24, 2005)

Comes now Hardy C. Menees, Special Master herein, and reports to the Court on certain procedural aspects and the results of the Election by Written Ballot held on October 22, 2005:

A. On October 6, 2005, the Special Master mailed Notices of the election by First Class Mail to one hundred eighteen (118) prospective voting members. This list had been mailed to counsel of record in the days prior to

mailing and some amended addresses had been reported from those set forth in the 2002 Church Directory. The amended addresses from counsel were used in the October 6, 2005 mailing. The final mailing list and a specimen Notice are attached hereto and incorporated herein collectively as Exhibit 1 of this Report.

B. Eleven (11) envelopes from the October 6, 2005 mailing were returned by the United States Postal Service as "Undeliverable" in the days prior to the election. As these were received, the Special Master notified the counsel of record by faxed letters dated October 19, 2005 and October 21, 2005, copies of which are appended hereto and incorporated herein as Exhibits 2 and 3. The Special Master notes that four (4) of the members (and one [1] of their children) whose envelopes were returned cast votes in the election.

C. Classified ads were placed in the *St. Louis Post-Dispatch* and the *Suburban Newspapers of Greater St. Louis*. Affidavits of publication are included herewith along with the specimen ads (said Affidavits and specimen ads are collectively incorporated herein and referred to as Exhibit 4). Despite specific written instructions from the Special Master, the *St. Louis Post-Dispatch* ran the ad on eight (8) consecutive days, but the cost was the same as if it had run on two (2) consecutive Sundays prior to the election, per the instructions of the Special Master.

D. As issues arose during the actual election, the Special Master dictated "Running Election Notes" in the presence of all counsel in attendance at the election (Mr. Margo, Mr.. Quinn and Mr. Norwood). Said counsel were given the option to continually review said notes and to comment into the text of said notes. Said "Running

Election Notes" are incorporated herein as Exhibit 5. These notes indicate that the Special Master, where practical and logical, reached an opinion for inclusion (qualification of a voter) as opposed to exclusion (disqualification of a voter).

E. The total number of members voting was one hundred nine (109). Of this count eighty-five (85) voters appeared in person and twenty-four (24) voters appeared by proxy as deemed sufficient by the Special Master.

F. Eighteen (18) voters listed in the 2002 Directory as children presented sufficient proof to qualify themselves as voters. Of special note is the fact that at least two of these persons were well into middle age (in fact, estimated to be beyond fifty years old by the Special Master) and were apparently listed as children of a member who voted by proxy and is more than ninety years old. Other children were of various ages, but the Special Master was satisfied that each qualified voter who had been listed as a child in the 2002 Directory was eighteen years of age on January 1, 2002, per the previously-issued Special Master's Report and the Order Authorizing Election by Written Ballot dated September 29, 2005. Of final comment in this regard, the Special Master notes that one (1) person elected as a Director (Kathy Simmons) was included in the 2002 Church Directory, after her parents' names, meaning that she was technically a "child" in the Directory, although she was fifty (50) years old on January 1, 2002.

G. The top ten (10) members receiving votes were as follows:

Name	Votes Received
1. Marva Gaylor	87
2. Kenneth Worsham	87
3. Kathy Simmons	86
4. David Grandison	85
5. James Sheets	85
6. Richard Rollins	22
7. Loyse Clay	22
8. Preston McDowell	22
9. Mark Stallion	22
10. Mike Whittaker	22

Note: The only other candidates receiving votes were Shirley Schell (2), Alan Clayton (1), Alan Clayton, Jr. (1) and Sandra Fulgham (l).

H) The registration list and signature lists, as well as all Ballots, are in the possession of the Special Master, who will retain all such documents until further Order of this Court.

WHEREFORE, The Special Master prays for the issuance of a Certifying Order which names the following members as the duly elected Board of Directors of the First Missionary Baptist Church of Ballwin, to serve one (1) year terms of office from the date of the requested Certifying Order:

1. Marva Gaylor
2. Kenneth Worsham
3. Kathy Simmons
4. David Grandison
5. James Sheets.

WHEREFORE, The Special Master prays for such other and further relief as is just and proper in the premises.

Respectfully Submitted as a
Just, Impartial and True Report of
Election Procedures and Results

/s/ Hardy C. Menees
HARDY C. MENEES #23374
Special Master
121 West Adams
Kirkwood, Missouri 63122
(314) 821-1111
(314) 821-9798 FAX

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

IN THE CIRCUIT COURT OF
THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN, a/k/a FIRST BAPTIST CHURCH OF BALLWIN, Etc.,	)	
Plaintiff,	)	
vs.	)	
RICHARD ROLLINS, et al.,	)	Cause No. 02CC-002033
Defendants and Third-Party Plaintiffs,	)	Division No. 39
vs.	)	
ANTHONY BARNES, et al.,	)	
Third-Party Defendants.	)	

ORDER CERTIFYING ELECTION RESULTS AND APPOINTING THE BOARD OF DIRECTORS OF THE FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN (ALSO KNOWN AS THE FIRST BAPTIST CHURCH OF BALLWIN)

(Filed Oct. 24, 2005)

The Court finds that the election ordered on September 29, 2005, has been held on October 22, 2005, in compliance with all provisions of said Order. Having received and reviewed the Report of Election Procedure and Results, the Court finds that the election results should be certified as true and accurate.

THEREFORE, THE COURT ORDERS AS FOLLOWS:

1. The election results, as set forth in the Special Master's Report of Election Procedure and Results, are hereby certified as constituting a valid election of the Board of Directors of the First Missionary Baptist Church of Ballwin (also known as the First Baptist Church of Ballwin).

2. The following individuals are hereby appointed as the duly constituted Board of Directors of the First Missionary Baptist Church of Ballwin (also known as the First Baptist Church of Ballwin) and shall serve one (1) year terms as Directors from the date of this Order:

Marva Gaylor

Kenneth Worsham

Kathy Simmons

David Grandison

James Sheets.

SO ORDERED:

/s/ Patrick Clifford
PATRICK CLIFFORD
Judge, Division No. 39

Dated: October 24, 2005

cc: Mr. Michael P. Stephens/Mr. Roger W. Pecha/
Mr. Matthew A. Jacober
Mr. Mitchell A. Margo
Mr. Gregory Quinn
Mr. Ronald Norwood

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

IN THE CIRCUIT COURT OF
THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN, a/k/a FIRST BAPTIST CHURCH OF BALLWIN, Etc.,	)	
Plaintiff,	)	
vs.	)	
RICHARD ROLLINS, et al.,	)	Cause No. 02CC-002033
Defendants and Third-Party Plaintiffs,	)	Division No. 39
vs.	)	
ANTHONY BARNES, et al.,	)	
Third-Party Defendants.	)	

ORDER AUTHORIZING ELECTION BY WRITTEN BALLOT

(Filed Sep. 29, 2005)

Having reviewed the mandate of the Missouri Court of Appeals in its decision dated October 19, 2004, having also reviewed the Report of the Special Master filed on August 24, 2005, and having reviewed and heard oral argument on Defendants/Third-Party Plaintiffs' Objection to the Report of the Special Master, the Court now finds that:

1. An election by written ballot is the fair and equitable manner under the circumstances for the members of the

First Missionary Baptist Church of Ballwin ("the Church") to elect a board of directors.

2. Defendants/Third-Party Plaintiffs' Objection to the Report of the Special Master, having been duly considered, does not cause the Court to modify the Report of the Special Master. No other objections have been timely filed to the Report of the Special Master.

3. The findings of the Special Master regarding eligibility to serve as a director, eligibility to vote, notice to members of the Church regarding the election, and the Recommendations for Election Procedures are all fair and equitable under the circumstances of this case.

ACCORDINGLY, THE COURT OVERRULES DEFENDANTS/THIRD-PARTY PLAINTIFFS' OBJECTION TO THE REPORT OF THE SPECIAL MASTER.

THE COURT HEREBY ADOPTS THE REPORT OF THE SPECIAL MASTER pursuant to Missouri Supreme Court Rule 68.01(g)(3), and incorporates its Findings, Conclusions and Recommendations into this Order.

THE COURT ORDERS, ADJUDGES AND DECREES that an Election By Written Ballot shall be held in accordance with the findings of the Report of the Special Master on October 22, 2005, in accordance with all procedures set forth in detail in such Report.

SO ORDERED:

/s/ Patrick Clifford
PATRICK CLIFFORD
Judge, Division No. 39

Dated: September 29, 2005

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE
COUNTY OF ST. LOUIS
STATE OF MISSOURI

FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN, et al., a/k/a FIRST BAPTIST CHURCH OF BALLWIN, ETC.,	)
Plaintiff,	)
vs.	) Cause No. 02CC-002033
RICHARD ROLLINS, et al.,	) Division No. 39
Defendants and Third-Party Plaintiffs,	) (Filed Aug. 24, 2005)
vs.	)
ANTHONY BARNES, et al.,	)
Third-Party Defendants.	)

REPORT OF THE SPECIAL MASTER

Comes now Hardy C. Menees, duly appointed Special Master herein, and files his Report pursuant to the Order of Reference dated May 6, 2005, and in compliance with the opinion and mandate of the Missouri Court of Appeals, Eastern District, issued in this cause filed on October 19, 2004. After review of the aforesaid Order of Reference, the Court of Appeals opinion/mandate and the briefs filed by the parties pursuant to the scheduling order dated May 12, 2005, the Special Master finds, concludes and recommends:

I. Findings of Fact and Conclusions of Law

Having reviewed the record of this cause as developed to date, the Special Master now finds and concludes:

1. The First Missionary Baptist Church of Ballwin ("the Church") is a Missouri not-for-profit corporation, having registered under and submitted to the provisions of Chapter 355 of the Revised Statutes of the State of Missouri since 1961. Despite defendants' contention that the election of a Board of Directors and the designation of those entitled to vote for the Board are ecclesiastical matters over which this Court has no jurisdiction, it is well established law in Missouri that a religious organization which chooses to incorporate under the non profit corporation laws of Missouri submits itself to state court jurisdiction on all matters of a corporate nature. *Beth Hamedrosh Hagodol Cemetery Association v. Levy*, 923 S.W.2d 439, 442 (Mo.App. ED. 1996).

2. The church currently exists without a validly elected Board of Directors as required by Section 355.316[1] and, therefore, it lacks the necessary statutory control group to function as a legal entity in which " . . . all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board." Section 355.316.2.

3. The mandate of the Court of Appeals, citing Sections 355.081.1 and 355.241.1(1), requires this Court to "order a meeting to be held . . . to properly elect a board of

[1] All statutory references hereinafter are to R.S.Mo. 2000 unless otherwise indicated

directors." *First Missionary Baptist Church of Ballwin v. Rollins,* 151 S.W.3d 846, 852 (Mo.App.E.D. 2004)

4. The proper response of this Court to comply with the Court of Appeals mandate is not to order an open meeting of the Church's members or the congregation at large, but instead to order an election which is an alternative remedy afforded in Section 355.081.1:

> 1. *If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members*, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the attorney general, the *circuit court of the county where the corporation has its principal place of business may order* that such a meeting be called or *that a written ballot or other form of obtaining the vote of members,* delegates, or directors *be authorized, in such a manner as the court finds fair and equitable under the circumstances.* (Emphasis added).

5. The Special Master specifically finds that it is impractical for the Court to Order the Church to call or conduct a meeting of its members to elect a Board of Directors and, therefore, a formal election by written ballot is the only appropriate method to elect said Board for the Church. An Order Authorizing Election by Written Ballot shall be issued which incorporates the findings herein, or the modifications to this Report as are deemed appropriate by the Court, to effect a fair and equitable election under the circumstances as afforded and required by Section 355.081.1.

6. The "Definitions" section of Chapter 355 define "Directors" as: " . . . individuals, designated in the articles or by laws . . . to act as members of the Board." The Articles of Incorporation filed with the Missouri Secretary of State on November 27, 1961 state: "The first Board of Directors shall be five (5) in number." Therefore, the Special Master finds that the number of Directors to be elected shall be five (5) individuals. Furthermore, Section 355.276.1 provides that "each member is entitled to one vote on each matter voted on by the members." This provision is found by the Special Master to create a right of five (5) votes per member for each of five (5) vacant board of director positions.

7. The Articles of Incorporation and the Constitution and By-Laws (the "By-Laws"), although the validity of the latter of which is challenged by the defendants, do not state any specific qualifications for an individual to be eligible to serve as a director of the church. The By-Laws do state that " . . . members of the board shall be members of this church in good and regular standing" (By-Laws, Article II). Therefore, the Special Master finds that any member of the Church, as defined hereafter, is eligible to receive votes as a director. Nothing in Chapter 355, the Articles of Incorporation or the By-Laws prescribes any alternative but for this Court to order a write-in election whereby each eligible voter casts five (5) or less separate votes for individuals who are members, as defined hereafter, to be elected as directors.

8. The Special Master specifically finds that it would be inappropriate, if not disenfranchising for some members, if the two groups who have primarily conducted this litigation to date were ordered to put forth slates of candidates for election. It is uncertain as to the breadth of

participation in the litigation among the members, and the best interest of the Church would not be served by casting the proposed election as being solely between two competing groups within the membership. The Special Master will not presuppose this election posture, but instead finds that an at-large, write-in election is the only fair and equitable member in which to elect a Board of Directors for the Church under the circumstances.

9. Neither the Articles of Incorporation nor the By-Laws specify the term of directors and, therefore, those five (5) members receiving the largest number of votes shall be elected for a term of one (1) year, pursuant to Section 355.331.1, which states in part: "In the absence of any term specified in the articles or by-laws, the term of each director shall be one year." Said one year period shall commence to run from the date of an Order of this Court which certifies the election results.

10. Both the By-Laws and Chapter 355 provide direction as to who is eligible to vote in the required election. Section 355.081.2 provides the authority of this Court to designate the members that are eligible to vote: "In a proceeding under this section the court may determine who the members . . . are." A review of the record developed to date indicates a clear and unequivocal conclusion by the Special Master that the 2002 Church Directory shall serve as the most fair and equitable list of the members of the Church who are entitled to receive Notice and to vote. The 2002 Church Directory is the last published list which accurately reflects the Church members and which was issued prior to the commencement of the instant litigation. A copy of this Church Directory is attached hereto marked Exhibit "1" and shall be incorporated hereby by reference.

11. The 2002 Church Directory also lists family children in parentheses after his or her parent(s). Section 475.010 (2005) defines an adult as "a person who has reached the age of eighteen years." Therefore, any child whose name appears on the 2002 Church Directory, and who provides proof that he or she was eighteen years old on January 1, 2002, shall be considered a member of the Church and thus entitled to receive notice and to vote. Because of the difficulty for the Special Master in determining this age eligibility at the time of providing Notice to the members, the Notice forwarded to all names on the 2002 Church Directory shall have a provision entitled: "Special Notice to Parents of Children Who May Be Eligible To Vote."

12. Pursuant to Section 355.241.2: "The Court may fix the time and place of the meeting (or election), specify a record date for determining members entitled to notice of and to vote at the meeting (or election) . . . " (parenthetical phrase added). The record date of determining membership of the Church shall be January 1, 2002, which is found by the Special Master to be fair and equitable under the circumstances, and is likewise consistent with the aforesaid use of the 2002 Church Directory.

13. Neither the Articles nor By-Laws establish any classes of membership within the Church, nor do they designate any particular voting procedure. Therefore, Section 355.186 controls the voting rights of each member: "All members shall have the same rights and obligations with respect to voting . . . " The Special Master specifically finds that the ballot for the election shall have five (5) lines to write-in the name of a member for election as a director and that the ballot should bear a legend that no name can be repeated; that any name on a ballot will be

counted only once; and that an eligible voter may, but need not, vote for a full list of five (5) directors; that any name written on a ballot in a place other than on one of the five (5) designated lines will not be counted as a vote; and that members may vote one (1) time for themselves.

14. The Special Master finds that there is no statutory authority or By-Law provision for absentee voting. Section 355.291 does, however, provide for a proxy procedure that should address the problem of a member being out of town, medically disabled, or otherwise unable to vote in person on the designated election date. Therefore, the use of a proxy procedure, as set forth hereafter, is found to be fair and equitable under the circumstances.

15. The Special Master finds and concludes that the most fair and equitable manner of providing notice of the action to the members under the circumstances herein would be as follows:

A) Each adult person listed on the 2002 Church Directory shall receive a written notice by First Class mail in a form as set forth in Exhibit "2", attached hereto and incorporated herein by reference. If the attorneys for plaintiffs or defendants advise the Special Master of any change of address of a member, a second Notice shall be sent by First Class mail to this address in addition to the address in the 2002 Church Directory.

B) Said Notices shall be mailed by the Special Master at least fourteen (14) days in advance of the election date as set forth hereafter. Said period is found by the Special Master to be fair and equitable under the circumstances and it is further found that the Court, pursuant to Section 355.081.2, is not bound by any other Notice other requirement set forth in Chapter 355.

C) On at least one (1) occasion in the fourteen (14) days prior to the election, the Special Master shall provide written Notice to the Members and the public at large as set forth in Exhibit "3" (which is attached hereto and incorporated herein by reference) in both the *St. Louis Post Dispatch* and the *West County Journal.*

D) The Special Master shall report any returned envelopes to the attorneys of record to this cause upon receipt of same. Said attorneys may request that an additional Notice is forwarded to a substitute address with which they provide the Special Master.

E) The Special Master shall maintain a separate list to be created as individual Notices are sent (and returned, as the case may be) which lists the addressees. The Special Master will also maintain a log of any contact with potential Members as generated from any Notice or received from any other source which relates to the election ordered herein. Said documents shall be maintained by the Special Master until further Order of this Court.

16. By Notice of Filing of the Special Master's Report, and dissemination of said Report to all parties in open Court on August 24, 2005, the thirty (30) day objection period set forth in Supreme Court Rule 68.01(g)(2) shall commence. The Court shall hear any objections to the Report at 10:00 a.m. on September 29, 2005. Thereafter, postal Notice to members, as set forth in Paragraph 15-A above (or as otherwise ordered by the Court), shall be posted no later than October 5, 2005, by the Special Master and newspaper notices shall be run between October 5-15, 2005.

II. Recommendations For Election Procedure

17. Pursuant to the Order of Reference, the following detailed recommendations are made by the Special Master regarding the conduct of the election:

A) The election shall be held on Saturday, October 22, 2005, from noon until 4:00 p.m., and shall be supervised personally by the Special Master and any of his staff or designees.

B) The election shall be held at a meeting room at the Daniel Boone Branch of the St. Louis County Library, 300 Clarkson Road, Ballwin, Missouri 63011.

C) No electioneering, including "exhibit polls" shall be conducted on the library premises, including the parking lot.

D) All voters shall be required to present picture identification deemed valid by the Special Master. If a determination of the voter being 18 years of age on January 1, 2002 is required, said prospective voter shall produce a birth certificate and a valid form of picture identification card.

E) No absentee ballots will be issued by the Special Master. However, an eligible Member may appoint a proxy to vote in the election by signing a notarized appointment form either personally or by an attorney-in-fact. The determination of the validity of any proxy vote shall rest solely within the discretion of the Special Master. A copy of said Appointment Form is attached hereto as Exhibit "4" and is incorporated herein by reference.

F) Each voter shall be provided an ink pen and a ballot in the form of Exhibit "5" attached hereto and

incorporated herein by reference. Each voter shall deposit his/her ballot in a ballot box as provided by the Special Master.

G) Any questions during the election process as to voting procedure shall be answered only by the Special Master, whose answer or decision shall then be dispositive.

H) The plaintiffs, defendants and third-party defendants (as individual groups) may each designate one poll-watcher to observe the election process without comment (unless solicited by the Special Master). This person may not be a voting member of the Church and, preferably, should be an attorney or other employee of one of the law firms of record. To serve in such capacity, the Special Master must receive written Notice of the identity of the poll watchers within forty-eight (48) hours of the election.

I) The numbers of members in the voting room at any one time shall be determined at the discretion of the Special Master. There shall be no communication between voters in the election room, other than with the Special Master or his staff.

J) All ballots shall be taken from the polling place by the Special Master and tabulated in an Election Results Report, per the form set forth in Exhibit "6" with the results presented to the Court by noon, October 24, 2005. The ballots shall thereafter be retained in the custody of the Special Master until further Order of this Court. The Special Master shall provide the Court with a typed list of the top ten (10) candidates receiving votes, with the name and number of votes for each candidate included therein.

K) Any question regarding eligibility to vote, voter identification, manner of voting, or vote count shall be

resolved in the sole discretion of the Special Master, subject only to Order of this Court, on its own motion or upon written motion of a party hereto.

L) The Court shall issue its Order Authorization Election by Written Ballot and a subsequent Order Certifying Election Results in forms substantially similar to Exhibits "7" and "8" attached hereto and incorporated herein by reference.

M) Should a "tie vote" occur for the last-to-be-determined directorship, or for another deadlocked result, a run-off election for said position shall be held as directed by the Court. The Order Certifying Election Results shall not be issued until said run-off election is held.

* * *

Respectfully Submitted as a
Just, Impartial and True Report

/s/ Hardy C. Menees

HARDY C. MENEES
Special Master/Attorney at Law
121 West Adams
Kirkwood, Missouri 63122
(314) 821-1111
(314) 821-9798 FAX

IN THE SUPREME COURT OF MISSOURI

SC87975
ED87320

September Session, 2006

First Missionary Baptist Church
of Ballwin, et al.,

Respondents,

vs. (TRANSFER)

Richard Rollins, et al.,

Appellants.

Now at this day, on consideration of the appellants' application to transfer the above-entitled cause from the Missouri Court of Appeals, Eastern District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Thomas F. Simon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Session, 2006, and on the 26th day of September, 2006, in the above-entitled cause.

Given under my hand and
seal of said Court, at the City
of Jeffferson, this 26th day of
September, 2006.

/s/ Thomas Simon Clerk

D.C.

EXHIBIT 2

The Constitutions and By-Laws of First Missionary Baptist Church, Ballwin, Mo.

Organization

1. This church is organized on the basis of historic congregationalism. The church is priviledged [sic] to administer its own affairs independently of any exterior ecclesiastical control, and the will of the majority of its members properly expressed shall be conclusive authority in all matters, including real property owned by it shall not be subject to and does not require the approval by any bishop, presbytery, synod, assembly, convention or conference.

2. The Bible is the fundamental guide in the organization and discipline of Christian Churches inasmuch as it teaches that a company of Christians voluntarily covenanting together to worship God and celebrate the Christian ordinances, is a Christian Church.

3. This church is a Corporation organized according to the statutes of the State of Missouri, pertaining to benevolent, religious or educational associations and is incorporated by pro forma decree of the Circuit Court of the County of duly of record in the Recorder of Deeds Office of the County in Book who has issured [sic] a Certified Copy and is of record in the Office of the Secretary of State of the State of Missouri, which record set forth the pro forma decree of incorporation issured by the Circuit Court of the County of Saint Louis, Missouri,

Constitution

Article I

The name of this church is First Missionary Baptist Church located in Ballwin, Mo.

Under the Pro Forma Devree [sic] its duration is for all times.

The Corporation is formed for religious and benevolent purposes and for holding of title to real estate for church edifices, parsonages and cemeteries.

The object of this Church is for the extension of the Kingdom of God among men.

Article II

Government. The government of this church shall be vested in the body of members who are in good and regular standing.

Membership. Membership of this church shall consist of such persons who have been duly and regularly received into its fellowship. All persons are eligible to membership in this church who are willing to accept in spirit the following principles: Believe in the Fatherhood of God and the Brotherhood of Man. Believe that Christ is the way the truth and the life. Belief in the clean heart, the unworldly mind, and the service of love which Jesus taught an exemplified and acceptance of His Spirit and His teaching.

Officers. Officers of this church are to be elected, and the duties prescribed and work carried on in accordance with the By-Laws hereinafter provided or as they may be amended from time to time.

Article IV

Amendments. The Constitution of the Church may be amended at any Church meeting by a two-thirds majority of those voting. At least one-third of the membership must be present to amend any law.

Article V

Corporate Existence. This Church now exist under a Pro Forma Decree as a Corporation by virtue of the Statutes of the State of Missouri pertaining to benevolent, religious, scientific, fraternal, beneficial, educational and miscellaneous associations, and shall hereafter exist in conformity to the Laws and statutes of the State of Missouri pertaining to such corporations in conformity to the charter under which this church was organized as a Corporation and in conformity to the Constitution and By-Laws of this Church as they now or hereafter exist.

By-Laws
Members

Article I.

Section I. Reception of Members. Members may be received into this Church at any regular service of worship, in the manner prescribed by the Church directory.

1. A person applying for membership, may come as a (1) Candidate for Baptism. (2) by letter, from another Baptist Church; to accompany the person or upon receipt no longer than thirty days after joining, (3) or through restoration, at which time the member seeking restoration, should appear before the Church to ask pardon, and be restored officially.

Section 2. Duties of Members. All members of this Church are expected to fulfill the practical obigations [sic] of sincere Christian living. They are expected to have high moral standards and to exemplify Christian deportment, and in all reasonable ways to support and serve its organized activities.

Section 3. Right of Members. All members who are in good and regular standing may participate and vote in the transactions of this Church.

Section 4. Termination of Membership. The continuance of membership in this church shall be subject to the following terms:

1. Any member who is in good and regular standing, who has moved away or out of town, and who desires a letter of dismissal and recommendation to any other church is entitled to receive it upon request. Such request may be acted upon at any regular meeting of the church.

2. Any member who desires to withdraw from membership in this church may do so by making application at any regular meeting of the church. The granting of a letter on these conditions will be the decision of the Official Board.

3. At each quarterly meeting the Board of Deacons shall submit to the Church a list of those members, (residential and non-residential) who after due search and efforts made to restore them to proper fellowship, having failed to make there [sic] whereabouts and intentions known. (If it seems best) according to the vote of the Church, these names shall be inactivated from the rolls, and their names placed upon an inactive roll; after which

time they shall not be considered a member in good and regular standing, nor shall they be reported as members. Person's names who appear upon the inactive rolls may be restored whenever satisfactory evidence of fidelity and pardon for sloughfulness [sic] is proven.

Section 5. No person may be dismissed from membership of this Church for any reason not heretofore provided in the By-Laws, excepting in the following circumstances. If it shall at any time seem best to consider the summary termination of the membership of any person, the Board of Deacons shall first consult with the pastor. If the situation be found to justify further action, the Mother Board of this Church will be requested to consult with the member or members. If no satisfactory changes or [sic] evident, and the situation justifies further action, it shall be taken to the Church Body. A member will be dismissed by the majority vote of the congregation. Any member so dismissed must be restored in the same manner, by the vote of the congregation's majority.

Officers And Boards

Article II. The Officers and Boards of this Church shall be as the need arises: They shall be a Minister, Joint Board, Board of Deacons, Board of Trustees, Board of Education, General Program Committee Chairman, Church Clerk, Treasurer, Auditor, Auliliary [sic] Presidents, Director of Music. All officers and members of the boards shall be members of this church in good and regular standing.

Article III. The Minister

Section 1... It shall be the duty of the Minster [sic] to assume the spiritual leadership of this Church and to cooperate with the Officers, Boards and Organizations in carrying forward the general program of service. He shall conduct the worship, preach the Gospel, administer the Ordinances and in general promote the interest of the Christian life. He shall be ex-officio, a member of the Joint Board, the Board of Deacons, and other boards, but shall not hold any office.

**IN THE CIRCUIT COURT OF
THE COUNTY OF ST. LOUIS
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI**

FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN, et al.	)	
Plaintiffs,	)	No. 02CC-002033
v.	)	Division 39
RICHARD ROLLINS, et al.	)	
Defendants/Third-Party Plaintiffs.	)	

OBJECTIONS TO OCTOBER 22, 2005 ELECTION AND ELECTION RESULTS AND MOTION TO VACATE COURT'S OCTOBER 24, 2005 ORDER ADOPTING ELECTION RESULTS AND REQUEST FOR EVIDENTIARY HEARING

(Filed Nov. 02, 2005)

COME NOW Defendants/Third-Party Plaintiffs Richard Rollins, Press McDowell, Loyse Clay and Charlet Clay, individually and derivatively on behalf of the First Missionary Baptist Church of Ballwin a/k/a First Baptist Church of Ballwin (hereinafter referred to as "Defendants/Third-Party Plaintiffs"), and pursuant to Missouri Civil Rule 68.01(g), hereby file their Objections to the Report of the Special Master relating to the October 22, 2005 election and requests that the Court, pursuant to Missouri Civil Rule 75.01, vacate its October 24, 2005 Order Certifying the Election Results and Appointing the Board of Directors of First Missionary Baptist Church of Ballwin. In conjunction with the resolution of these Objections and

Motion, Defendants/Third-Party Plaintiffs respectfully request that the Court permit an evidentiary hearing.

As grounds for their Objections and this Motion to Vacate, Defendants/Third-party Plaintiffs state as follows:

1. On September 29, 2005, the Court overruled Defendants/Third-Party Plaintiffs objections and adopted Mr. Menees' Report of Special Master recommending that an "election" be conducted on October 22, 2005 between noon and 4 p.m. to "elect" a Board of Directors for First Missionary Baptist Church.

2. Fundamentally, the election as held is violative of Defendants'/Third-Party Plaintiffs' rights and those of First Missionary Baptist Church and bona fide church members, guaranteed under the Establishment Clause and Free Exercise Clause of First Amendment of the United States Constitution and under Art I, Section 5 of the Missouri Constitution, in that the Special Master, after determining which individuals constitute "members" of First Missionary Baptist Church that would be entitled to vote in the election and which individuals would be permitted to serve on the Board of Directors of First Missionary Baptist Church, permitted non-members of the church, as well as individuals who are not in "good and regular standing", to not only vote as church members but also to be voted on and elected as Board Members of the Church.

3. The Special Master's membership determination and ultimate recommendation to certify a vote based on the Special Master's membership determination, and this Court's approval of same, infringes upon the ecclesiastical authority of First Missionary Baptist Church to make such membership and leadership determinations. The Missouri

courts have held that the determination of "membership" is an ecclesiastical matter to be decided by the church. *See Rolfe v. Parker*, 968 S.W.2d 178, 184 (Mo.App. 1998) ("The determination of who are qualified members of the church is an ecclesiastical matter"); *Murr v. Maxwell*, 232 S.W.2d 219, 234 (Mo.App. 1950) ("Under the law, questions concerning expulsion of members are purely ecclesiastical questions"). Similarly, determinations of church governance are ecclesiastical matters that must likewise be decided by the church and its leadership. *Siberian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Milivojevich, et al.*, 426 U.S. 696, 722, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976) ("religious freedom encompasses the "power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine'"). By joining or otherwise associating themselves with a church, such individuals voluntarily submit themselves to the religious authorities of the church, including such church governance and membership determinations. *Everson v. Bd. of Educ.*, 330 U.S. 1, 8-11 (1947) ("whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them").

4. The "election" and the election results should also be declared null and void by this Court as being in contravention of the express mandate of the Missouri Court of Appeals in *First Missionary Baptist Church of Ballwin v. Rollins*, 151 S.W.2d 846 (Mo.App.E.D. 2004), which specific mandate ordered that "a meeting be held according to sections 355.081.1 and 355.241.1(1) to properly elect a

board of directors". Thus, the specific mandate of the Court of Appeals was limited to the directive to have a "meeting" of the church under section 355.081.1 and 355.241.1(1) to "properly elect a board of directors." Such a meeting would have served to promote the constitutional rights of First Missionary Baptist Church and its bona fide membership and would have limited the need to impose various election procedures that have effectively interfered with the ecclesiastical authority of the church to decide appropriate membership and leadership.

5. The Court of Appeals mandate is binding on this Court under the law of the case doctrine, and this Court is without any jurisdiction to certify an election and to appoint a Board of Directors of First Missionary Baptist Church in the absence of such a meeting and full compliance with the Court of Appeals' directives. *See Hiblovic v. CINCO-T.C., Inc.,* 168 S.W.3d 506, 509 (Mo.App.E.D. 2005) ("Where a case is reversed and remanded, the rulings of the higher court become the law of the case"); *Outcom, Inc. v. City of Lake St. Louis*, 996 S.W.2d 571 (Mo.App.E.D. 1999) ("The trial court is without power to modify, alter, amend, or otherwise depart from the appellate judgment, and any proceedings contrary to the directions of the mandate are null and void").

6. Any such membership and voter eligibility determination must necessarily take into account compliance with and adherence to customs, practices and church teaching, all of which would require input from the recognized and established church leadership. One established custom of First Missionary Baptist Church for acceptance by the church as a member is a church custom derived from biblical teachings denominated as the "Right Hand of Fellowship". The "Right Hand of Fellowship" and the

extending or withdrawing thereof is a public testimony made by the Pastor and the Deacons of the Church relating to the acceptance or rejection of an individual to be a member of the local body of Christ. It is a term used by the Baptist Christian Faith to refer to a biblical principle. The right hand of fellowship is only extended to individuals after there has been a public testimony of faith and a public Baptism and the individual publicly testifies that they are willing to be governed by the rules and the leadership of the local Baptist Church. Even David Grandison admitted that the "ceremony that officially recognizes an individual as a member of the church" is the "Right Hand of Fellowship". Depo. of David Grandison, pp. 41-42, which pages are attached hereto at Tab 1. Grandison also conceded that prior to such right of membership and bestowal of the "Right Hand of Fellowship", the putative member is required to complete "several months" of bible study. Depo. of David Grandison, p. 42. The Special Master ignored this qualification in determining membership and voting eligibility.

7. Despite the fact that the claimed By-Laws relied on by the Special Master require that only "members of this church in good and regular standing" may hold office as a board member or be eligible to vote, the Special Master proceeded to determine who would constitute "members" of First Baptist Church in the absence of whether the individuals ultimately allowed to vote were so qualified. In so doing, the Special Master ignored the fact that the individuals that would be permitted to vote at the October 22, 2005 "election" and permitted to hold office as a Board member were not all members in good and regular standing of First Missionary Baptist Church.

8. Defendants/Third-Party Plaintiffs have objected to any reliance on such Bylaws for various reasons, including the fact that the governing Bylaws should be deemed those adopted during a November, 2003 annual church meeting wherein certain By-laws were adopted and a Board of Directors and Officers were selected, which election satisfied the requirements mandated by the Court of Appeals, a copy of which Bylaws are attached hereto at Tab 2. The Special Master should have been guided by the 2003 Bylaws in considering membership and election qualifications. Instead, these 2003 Bylaws were wholly ignored. The Special Master also ignored the fact that a Board of Directors (consisting of recognized church leaders) had in fact been elected in November of 2003. *See* Official Church Resolution filed with the Secretary of State, including with the filings attached at Tab 2. To the extent that the Special Master relied on outdated Bylaws in connection with the election eligibility determinations, the Special Master's determination was clearly erroneous. At a minimum, the Special Master had an obligation to limit the voting participants and eligible candidates to individuals who were in "good and regular standing".

9. The Special Master, rather that limiting the voting at the "election" to members in good and regular standing, permitted all individuals listed in "2002 Church Directory" to vote at the October 22, 2005 election and to be deemed eligible to be elected as a member of the church Board of Directors. Outside of the Special Master and this Court, no recognized authority at First Missionary Baptist Church has adopted the 2002 Church Directory as a list of members eligible to vote on church affairs or who would qualify as eligible Board candidates. Nor has any recognized church authority determined that the individuals

listed in 2002 Church Directory qualify as members in "good and regular standing" who meet the established requirements of church membership.

10. In effectively making the determination that such individuals listed in the directory would be treated as members entitled to vote and permitting such individuals to vote, the Special Master gave no consideration to whether the individuals listed in the directory were members of First Baptist Missionary Church in "good and regular standing" under the requirements he considered as indicative of church membership or whether the individuals listed in the 2002 Church Directory met any of the other established qualifications of the First Missionary Baptist Church as to who qualifies as a "member", which qualifications would include regularly participating in worship according to biblical scripture, studying scripture, giving tithes and offerings, testimony of faith, and the extension and acceptance of the "Right Hand of Fellowship".

11. The Special Master went so far as to permit certain individuals to vote as church "members", and even to be elected as Board members, who were "children" of those included in the 2002 Church Directory if these "children" attained the age of 18 as of January 1, 2002, regardless of whether such individuals are deemed church members under standards established by the church or whether the individuals would qualify as members in "good and regular standing" under the Bylaws relied on by the Special Master.

12. In determining membership in the fashion and permitting various individual non-members and former church members to vote in the "election", the Special Master

also failed to take into account individuals who are currently church members who obtained that status after preparation of the 2002 Church Directory or who, for whatever reason, were not included in the 2002 Church Directory.

13. Because of the Special Master's determination of eligible voters and those eligible to serve as Directors, which determinations failed to take into account those individuals who are currently members of the church in good standing or who have otherwise met the church adopted standards for membership, various individuals were permitted to vote at the October 22, 2005 "election" even though those individuals: (1) had never been made members of the church "in good and regular standing" because they failed to fulfill the requirements for church membership or, in the case of some of the "children" permitted to vote, never sought church membership; and (2) had left First Missionary Baptist Church and either moved away or joined other congregations for various reasons. Other bona fide members were deprived of their right to vote simply because they, for whatever reason, were not included in the church directory.

14. For instance, in the results certified by the Special Master, 18 individuals were permitted to vote as "children" even though such individuals had not been demonstrated by the Special Master or the plaintiffs to be members of the church "in good and regular standing". As noted by the Special Master in his reports, some of these "children" that were allowed to vote as "members" were in fact middle-aged individuals who were not listed separately in the 2002 directory. Report of Election Procedure and Results, p. 3. Even if the 2002 Directory could be deemed a directory of "members in good and regular standing", the only reason a middle-aged person would not

be included as a member identified separately is if the person's affiliation with the church is solely as an individual who might be related to a church member. Clearly, such individuals who were adults in 2002, but not even identified separately in the 2002 Church Directory, should not have been granted such membership status by the Court. Nor should "children" be granted such status merely because they so happen to be related to individuals who might otherwise qualify as members. Rather, the determination of whether such individuals would so qualify is an ecclesiastical one that should be made by the church through church leadership based on established qualifications for determining who is a member "in good and regular standing" that would be entitled to vote and hold office.

15. The most egregious example of the impermissible granting of such rights to "children" is clearly that of Kathy Simmons. As the Special Master noted, Kathy Simmons was elected as a Director even though she, as a middle-aged woman, was only listed in the 2002 Directory after her parents' names which, according to the Special Master, "she was technically a 'child' in the Directory, although she was fifty (50) years old on January 1, 2002." Report of Election Procedure and Results, p. 3. Ms. Simmons was not at that time, nor is she considered today, a member in "good and regular standing", nor does she meet any of the other established requirements for church membership. The fact that Ms. Simmons was not listed individually in the Directory, but only listed solely as a child, supports the position of the Defendants/Third-Party Plaintiffs that Ms. Simmons is not a member in good and regular standing of First Missionary Baptist Church who was qualified to vote as a member, nor is she entitled to

serve as a Director of the Church. Thus, to the extent that Ms. Simmons has been "elected" as a director, such a determination should be rendered null and void by the Court.

16. Additionally, it appears that some the individuals who received notification of their entitlement to vote and ultimately cast a vote in the "election" were individuals who have disassociated themselves from the church by joining other churches. For example, John Hibbler, who was originally a defendant when this action was filed, has since disassociated himself from First Missionary Baptist Church. Nonetheless, Mr. Hibbler received notification of his right to vote as a "member" even though it was clear to Mr. Hibbler on his receipt of such notification that he had no right to vote since he had left First Missionary Baptist Church to join another church and in fact, Mr. Hibbler did not vote in the "election".

17. However, other individuals like Mr. Hibbler – who had disassociated themselves from First Missionary Baptist Church and in fact joined other churches since 2002 – likewise received notification of their "right" to vote as members and actually voted, either personally or through proxy. Those individuals would include, but are not limited to, the following: Laticia Adams (who resides in Florida); Anthony and Phyllis Box (who reside in Illinois); Albert Fontenot, Jr. (who is a member of a church in Illinois and voluntarily withdrew from First Missionary Baptist Church); Kenneth Worsham (who resides in Indiana); Carolyn Worsham (who resides in Indiana); Philip Hickman (who resides in Illinois); Michelle Hickman (who resides in Illinois); Tony Barnes (who is now a member of First Baptist in Chesterfield); Eddie Byrd (who is now a member of First Baptist in Creve Coeur); James

Whitt (who now resides in Columbia, Missouri), Annelle Whitt (who now resides in Columbia, Missouri); and Toni Reed (whom is understood to have joined another church as a member). The ability of such non-members or former members to cast improper ballots was compounded by the fact that individuals were permitted to casts proxy votes garnered by certain Third-Party Defendants. Without question, full compliance with the Court of Appeals mandate that a meeting be held would have permitted church leadership to challenge such ineligible voters. *See, e.g., Fast v. Dickey*, 527 S.W.2d 673 (Mo.App. 1975) (Wherein the Court upheld the validity of meeting of the church to determine if church property should be transferred to a church board, and upheld the exclusion from the vote individuals who did not qualify as "members" in accordance with the requirements of the church).

18. Even certain named Plaintiffs – David Grandison, Kathryn Simmons, James Sheets – began the process in November, 2003 of forming their own church by filing a Fictitious Name Registration under the business name of "Remnants First Baptist Church", a copy of which is attached hereto at Tab. 3. Defendants/Third-Party Plaintiffs believe that various other individuals who were permitted to vote as members of First Missionary Baptist Church also associated themselves with and worshiped under Remnants First Baptist Church. Nonetheless, these Remnants First Baptist Church members were not only permitted to vote as members "in good and regular standing", but all have now been appointed by this Court as Directors of First Missionary Baptist Church. Without question, to permit an individuals who have joined and/or have formed and/or worshiped in other churches since 2002 to vote as First Missionary Baptist Church "members" and

actually be voted as Directors of First Missionary Baptist Church constitutes an abomination of traditional church doctrine, practice and custom, and constitutes a clear violation of the rights afforded to Defendants/Third-Party Plaintiffs and the rights of bona fide church members under the First Amendment and Article I, Section 5 of the Missouri Constitution.

19. Various other individuals that were permitted to vote have not attended worship services at First Missionary Baptist Church in a number of years or have otherwise disassociated themselves from the church, thereby failing to quality as members in "good and regular standing". Those individuals include the following: Ousley, William; Bejiole, Kathylene; Bejoile, Jane; Byrd, Kelly; Coffin, Phyllis; Cioope, Brenda; Davis, Vicki; Davis-Watts, Kendra; Dyson, Mary; Field, Randy; Fulgham, Sandra; Stratton, Wanda; Stratton, Sharla; Whitfield, Patricia; Grandison, David; Grandison, Debora; Gray, Joan; Lyons, David; Lyons, Jennifer; Lyons, Jamie; Lyons Jessica; Maclin, Lamar; Morrison, Gisele; Shell Johnson, Tracy; Scott, Janice; Sheets, James; Sheets, Dorothy; Knight, Shirley; Mallard, Diane; Williams, Ruby; Simmons, Sandra; Bonney, David; Thomas, Carol; Worsham, Jasmine; Britton, Sherman; Brown, Willie; Burns, Anita; Burns, Fred; Byrd, Della; Arthur, John; Arthur, Lucille; Adaway, Joe; Adaway, Beverley; Clayton, Alan; Clayton, Norma; Johnson, Percy; Johnson, Francis; Ousley, Rita; Johnson, Mildred; Simmons, Bernice; Gaylor, Marva; Fulgham George; White, Leonard; Clayton, Alan; Britton, Mary; Sheets, James; Sheets, Dorothy; Worsham, Kenneth; Worsham, Carolyn; Lyons, David; Perry, Doug; Fontenot, Albert Jr.; Hickman, Michelle; Hickman, Phillip; Grandison, David; Barnes, Tony; Field, Gary; Field, Helen; Shell,

Ernest; Shell, Shirley; Box, Phyllis; Box, Anthony; Davis, Kevin; and Davis, Joyce.

20. In fact, the church leadership, in an effort to ascertain which individuals wished to continue their membership in the church, forwarded correspondence to these individuals and various others who had any association with the church inviting them to reconfirm their commitment in any capacity and their continued participation in the church. Copies of that correspondence are attached hereto at Tab 4. However, those individuals failed to continue their membership and/or other association with the church by responding to the communication.

21. The election was improper and should be declared null and void because various individuals were permitted to vote as members and to be eligible to be elected as members even though these "members" have never been extended the "Right Hand of Fellowship". Those individuals who had not been extended the "Right Hand of Fellowship" include Ken Worsham and his family. Mr. Worsham withdrew from membership voluntarily after this dispute developed. After that withdrawal, Mr. Worsham failed to renew that membership by undergoing a "Right Hand of Fellowship" ceremony, which ceremony would be a precondition to any membership renewal. Consequently, not only was Mr. Worsham and his family not eligible to vote as members "in good and regular standing", Mr. Worsham is ineligible to be a member of the First Missionary Baptist Church Board of Directors.

22. Other individuals who qualified as bona fide church members were not permitted to vote simply because they were not included in the 2002 Church Directory. As documented by the Special Master, such

individuals included the adult children of Mr. Wendell Hill. Mr. Hill objected to the exclusion of his two adult children, Wendell B. Hill, Jr. and Wendy Wright. *See* Running Election Notes attached to the Report of the Election Procedure and Results. However, because these individuals were not included in the 2002 Directory, these individuals did not receive notification advising them of their right to vote as members.

23. Assuming the election was properly conducted and its results properly certified, this dispute and the election results establish a distinct division in the church, which division raises the question of which group would be entitled to possess and control the property of the church. The Missouri Courts have repeatedly held that "in the event of a schism in a church, the right to possession and control of the church property remains in that faction, **whether majority or minority**, which adheres to the faith, doctrine and established practices of the church as it existed prior to the division." *Mills v. Youdt*, 393 S.W.2d 96, 100 (Mo.App. 1965). To the extent that individuals like the plaintiffs and individuals who are now purporting to be "elected" directors have established another church or have joined other churches as members, such individuals under established Missouri law, would have no right to be vested with the responsibility of obtaining possession or control of church property acquired prior to the division. Instead, the only individuals with the right to maintain such possession or control would be individuals who adhered to the faith, doctrine and established practices of the church as it existed prior to 2002.

24. Consequently, to the extent that the Court overrules these objections and decides that the individuals were properly elected as members of the Board of Directors of

First Missionary Baptist Church, Defendants/Third-Party Plaintiffs' respectfully suggest that such individuals should not be permitted to obtain possession and control over church property in the absence of a determination that those individuals adhered to the faith, doctrine and established practices of the church as it existed prior to 2002.

25. Given the various issues raised above in challenging the "election" and the certification thereof, Defendants/Third-Party Plaintiffs request an evidentiary hearing in conjunction with the disposition of these Objections and Motion.

WHEREFORE, Defendants/Third-Party Plaintiffs Richard Rollins, Press McDowell, Loyse Clay and Charlet Clay, individually and derivatively on behalf of the First Missionary Baptist Church of Ballwin a/k/a First Baptist Church of Ballwin, respectfully request that the Court vacate its October 24, 2005 Order Certifying the Election Results and Appointing the Board of Directors of First Missionary Baptist Church of Ballwin.

LEWIS, RICE & FINGERSH, L.C.

By /s/ Ronald A. Norwood
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and Charlet Clay

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS TWENTY-FIRST JUDICIAL CIRCUIT STATE OF MISSOURI

First Missionary Baptist Church of Ballwin, a/k/a First Baptist Church of Ballwin, by and through its Board of Trustees, SCHELL, et al, and SCHELL, et al., derivatively on behalf of FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN, aka FIRST BAPTIST CHURCH OF BALLWIN, Plaintiff,	Cause No. 02CC-002033 Division 39
v.	
RICHARD ROLLINS, et al., and FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN, aka FIRST BAPTIST CHURCH OF BALLWIN, Defendants,	

DEFENDANTS/THIRD PARTY PLAINTIFFS' OBJECTION TO THE REPORT OF THE SPECIAL MASTER, HARDY MENEES

(Filed Sep. 23, 2005)

COME NOW Defendants/Third Party Plaintiffs, by and through counsel, pursuant to Rule 68 of the Missouri Rules of Civil Procedure, and for their Objections to The

Report of the Special Master, Hardy Menees, state as follows:

In addition to the matters set forth herein, Defendants restate and reincorporate their prior Memorandum of Defendants Regarding Voting Procedures and Defendants' Reply to Plaintiff's Statement to Special Master Hardy Menees as additional grounds for objection to the Master's Final Report. True and accurate copies are attached hereto and incorporated herein by reference as ***Exhibits "1" and "2"***, respectively.

* * *

Religious and Civil Liberties

State of Missouri ex rel., John R. Gaydos, et al. v. Channing D. Blaeuer, 81 S.W.3d 186 (Mo. App. WD 2002), provides great insight into the First Amendment establishment clause as it relates to limitations on a Court's involvement in religious matters. In *Gaydos,* the Court stated:

> The First Amendment, in terse prose, provides two sentinels for the protection of rights of religious autonomy – the Establishment Clause and the Free Exercise Clause: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . . ." This language was drafted from a historical background of religious discrimination and persecution. *Everson v. Bd. of Educ.,* 330 U.S. 1, 8-11 (1947). It was the desire for religious liberty, of course, that brought the early settlers from Europe. *Id.* at 8. Early colonists, however, once free to make their own religious establishments, rapidly did so, adopting colonial religious codes which enforced the tenets and practices of the

majority religion, whether ***Congregationalist***, Anglican, or Roman Catholic. *Id.* at 8-10. Gradually, there emerged a movement toward the disestablishment of state religions. *Id.* at 11-12. The movement to keep the executive, legislative, and judicial bodies from enmeshing themselves in religious matters has grown over the years as many states adopted constitutional provisions guaranteeing not only freedom of religious practice but also separation of the institutions of government from the institutions of religion.

> In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, ***whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.***
>
> * * *
>
> ***In this country the full and free right to entertain any religious belief***, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, ***is conceded to all***. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. ***The right to organize voluntary religious associations***

to assist in the expression and dissemination of any religious doctrine, and ***to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed***. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, ***subject only to such appeals as the organism itself provides for. Despite these exceptions, the First Amendment still stands as a limitation on civil court jurisdiction over disputes which are either essentially religious in nature or are sufficiently intertwined with church polity as to constitute a threat of entanglement with religious doctrine or practice.*** [*Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 49 L. Ed. 2d 151, 96 S. Ct. 2372 (1976)]. Within five years after *Everson*, the U.S. Supreme Court applied the First Amendment to a New York statute that transferred control of Russian Orthodox churches in

> New York from their Russian governing authority to an organization of such churches in the U.S.

Gaydos at 81. The Western District cites many of the same cases on this subject as the U.S. Supreme Court. ***Congregationalist***, Anglican, or Roman Catholic and all other forms of church governance are in view by U.S. Supreme Court, and Baptist does not differ.

Despite the Schell Group's view, all religions and forms of religions are given the same protection. The question is simple: what is the highest authority or tribunal of this Church? The Schell Group seems to have drawn a special distinction to what they refer to as a "hierarchical" church and would argue that our Courts have shown special favor to "hierarchical" churches. The Rollins Group has cited, on multiple occasions, to the *Serbian* case which makes clear the direction to our Courts to defer to the highest tribunal of FMBC. It happens that the local diocese involved in the *Serbian* case had a hierarchical church structure in that the local diocese (the subject of the dispute) reported to a higher church authority whose seat of authority was the mother church in Yugoslavia. The Schell Group in this case has misconstrued this to mean that courts only look to the highest tribunal in FMBC when the highest authority is seated outside of the local congregation. No such distinction is made by the U.S. Supreme Court. The subject matter in the *Serbian* case involved a dispute over church property owned by the local diocese. The defrocked Bishop was the top principal officer in the local diocese, per filings with the State of Illinois. The U.S. Supreme Court merely reiterated long standing constitutional principles, finding that the highest authority, regardless of their location, must be respected by the

courts. Just as the *Serbian* Court, this Court must accept who and what FMBC has historically stated as their highest tribunal and the decisions flowing therefrom, regardless of who the state lists as the highest officer in the corporate records filed with the state. The U.S. Supreme Court understood the danger of elevating form over function when religious bodies were involved, and this Court must follow its guidance.

Finally, as a point of clarification, the term hierarchical, as defined in *New Webster's Dictionary and Thesaurus of the English Language,* simply means, "of or relating to a hierarch or hierarchy" and, hierarchy, is defined as "a group of priests holding high office within an organized religion and having graded authority to govern the organization". The Schell Group has attempted to define hierarchical to mean only a tiered church structure having a local diocese and a mother church. The *Serbian* court simply stated that the local diocese was *not* the seat of the highest tribunal in the hierarchy. The highest tribunal was seated outside of the local diocese or congregation. The fact that the highest tribunal was seated outside of the local diocese or congregation does not necessitate this fact for a church to have a hierarchical rule of governance.

In the case of a Congregationalist church, such as FMBC, the highest tribunal is seated at the local congregation. Many congregational churches, such as Baptist Churches affiliated with the National Baptist convention, have hierarchical forms of governance where the highest tribunal is seated at the local congregation and the highest authorities are the Pastor and Deacons. In *Rolfe v. Parker,* 968 S.W. 2d 178 (Mo. App.1998), the court decided that the Quorum of Apostles was the governing body of a local church. The plaintiffs in the *Rolfe* case contended the

contest was between two factions within a not-for-profit Missouri corporation who disagreed as to which individuals were duly elected. They also asserted this was not an ecclesiastical matter in an attempt to secure court intervention. In ruling against the *Rolfe* group, the court, based on objective and historical evidence, determined that the authority in the Church was the Quorum of Apostles, and refused to adjudicate matters of membership as beyond its jurisdictional boundaries.

Similarly, the Schell Group argues that the issues are simply two factions which lead to the necessity of an election. However, this Court, as well as the Missouri Court of Appeals for the Eastern District has determined, in this case, based on objective evidence, which was in control of Church affairs: the Rollins [McDowell] Group, led by the highest ecclesiastical authority, Pastor Rollins.

ARGUMENT

The Special Master improperly Found that R.S. Mo. § 355 *et. seq.* requires an election to establish the leadership of a not-for-profit organization

The Report of the Special Master, in ordering an election at FMBC, is based on an improper premise. R.S.Mo. §355 *et seq. does not*, as the Report of the Special Master assumes, provide that the only way an organization formed under R.S.Mo. §355 *et seq.* can select its leaders is through an election. R.S.Mo. §355 *et seq.* clearly allows a not-for-profit organization taking advantage of the protections under R.S.Mo. § 355 *et seq. to choose its own method and manner* of determining its officers and implementing its own policies and procedures. While voting is an acceptable method, it is *not* the only method.

Historically, FMBC took advantage of other acceptable means and appointed its leaders, who were then empowered to make decisions for FMBC. The Plaintiffs, during their membership at FMBC, didn't object to this form of governance until they held their now infamous and undisputedly illegal April, 2002 election, the one termed the "like-minded" election since they only notified like minded individuals of the election. As the evidence presented to the Court to date has shown, Plaintiffs took this step after pursuing changes in a proper manner, however, Plaintiffs' lack of success (as they would define the term) caused them to abandon those procedures and conduct a coup to assert authority over FMBC. To reward this conduct with an election ignores the prior actions of Plaintiffs, justifies their wrongful conduct, harms Defendants and destroys FMBC. This, certainly, is not within the mandate of the Court of Appeals.

During its long history, FMBC, in recognition of its primary mission of evangelical work and spreading the Gospel of the Word, selected its leadership among its members based on the spiritual needs and principles of FMBC. Both R.S.Mo. §355 and all members of FMBC permitted this form of governance. While FMBC may be a non-profit under R.S.Mo. § 355, the Court must acknowledge that the primary focus, evangelism, was attained by maintaining leadership who kept this focus as the basis of all decisions.

While the Special Master has been provided with a significant amount of documentation of both the historical makeup of FMBC and the actions of Plaintiffs, the Special Master has seemingly ignored all of this past history in making the instant recommendation. Indeed, while the Court of Appeals mandate suggests that an election should

occur to resolve this matter, it neither dictates the terms of the election nor does it suggest that the history of FMBC should be ignored in formatting an election. Unfortunately, the Special Master has chosen to ignore this history and simply order an election without the benefit of FMBC history in mind. If the Court were to adopt such recommendations, it would be a direct violation of FMBC's and its members' civil and religious liberties.

In addition, the so called Church bylaws, as alleged by the Special Master's Report, were never adopted or executed nor was the document ever filed with any court or the Missouri Secretary of State's office. The bylaws refer to a Proforma Decree, but FMBC was filed under § 355 in the early 60's and has continued to file under § 355 since that time, as evidenced by the Secretary of State records. Indeed, after the sale of FMBC property, FMBC's attorney, David Harris of Gallop, Johnson and Neumann, advised FMBC that the so called bylaws were, in fact, not bylaws for FMBC for the reasons stated above. The Rollins Group has never conceded in any of their motions or briefs that the so-called bylaws are, in fact, bylaws. The Rollins Group simply contended that even if the so-called bylaws were, in fact, bylaws, the attempted coup by the Schell Group was still wrongful and invalid.

The Rollins Group maintains this contention and further assert that even if under the so-called bylaws, the Court orders an election, the Court still cannot decide who is a member (and who is not a member) because that is a decision based on *ecclesiastical* principles and outside of the purview of the Court. The so-called bylaws further provide that a member can be inactivated for lack of maintaining their whereabouts and lack of regular fellowship. The Schell Group certainly qualify for inactivation as they

have separated themselves from the congregation, have set up and filed for a fictitious entity registration known as Remnant Baptist Church, have attended services at Remnant Baptist Church, and have not responded to correspondence attempting to bring them back into the fold at FMBC. Unfortunately, the only response received from the Schell Group is the filing of a second lawsuit. The finding by the Special Master, in the face of the above evidence, that FMBC by-laws exist and are in effect is not based on sound reasoning and should be rejected by the Court.

FMBC has not operated under the so-called bylaws for the last 20 or more years. The Rollins and Shell [sic] Groups all agree that no organization or body external to the local congregation has any authority in FMBC's governance. However, the Rollins Group contends that FMBC's governance is hierarchical with the highest tribunal seated at the local congregation and the highest authority lies in the Pastor and the Deacons. The "highest ecclesiastical tribunal" does not presume a church having a hierarchical form of governance where the highest tribunal in the hierarchy is seated outside of the local congregation. This Court and the Missouri Court of Appeals have already determined this matter based on the objective evidence. It is clear that the Pastor and the Deacons were the authority in FMBC. Accordingly, they are the only body empowered to determine who is a member. A list of all members as of December 2002 and a current list all members is provided as an attachment to this motion. True and accurate copies are attached hereto and incorporated herein by reference as ***Exhibits "3" and "4"***, respectively.

Membership in FMBC must be determined using Ecclesiastical principles, not through the use of a telephone directory

FMBC is not a country club or other fraternal organization. It is a *Church*. As with any church, whether it is a Catholic parish, Jewish synagogue or Protestant congregation, membership is not as simple as attending services and having your name included in a directory. Membership in any church, FMBC included, is just not akin to membership in a club, such as the Elks, Rotary, Chamber of Commerce or a Country Club, and §355 certainly recognizes the difference. Membership in FMBC is based on a variety of factors, including the above; however, the above factors are a baseline minimum and are not conclusive. The Special Master, in finding that the listing of a name in the FMBC directory entitles one to a vote, completely ignores many church principles, such as faithful adherence to a life based upon the leadership and teaching of Jesus Christ as embodied in the New Testament, a bedrock principal of the Baptist faith.

This methodology is defective for a variety of reasons. First, the telephone directory is simply that, a telephone directory of individuals who attended services at FMBC. It was never intended to act as a listing of members who would be eligible to vote or to hold office in FMBC. This privilege was not extended to every individual who attended or attends services at FMBC, but was limited to those people who have been extended the "Right Hand of Fellowship". This is a term used at FMBC to signify religious adherence; a privilege reserved for those members of FMBC who have demonstrated their commitment to neither having a lifestyle consistent with Baptist beliefs, and not merely attending services nor having your

name included in a telephone directory. Each member, when they join themselves to FMBC, is subject to the rules of the Church and cannot seek a remedy from the court that is not afforded within FMBC.

Whether someone has sufficiently met the requirements of FMBC to be extended and, thereafter, accept the "Right Hand of Fellowship" is a determination that is not and *will never be* within the purview of this Court, nor any other Court, as that determination is purely ecclesiastical in nature. Should the Court determine it is within its power to determine membership, a hearing is required for each individual to present proof of their membership in FMBC and their adherence to the principles required for the "Right Hand of Fellowship".

For any election to be a proper representation of both the membership of FMBC and for the members to be qualified to serve as leaders of FMBC, there must be an analysis performed as to each purported member to determine if they have actually received the "Right Hand of Fellowship". Similarly, simply stating that anyone whose name appeared in the FMBC Telephone Directory and who happened to be 18 years old on January 1, 2002, is qualified to be on the Board of Directors is not only absurd, but acts as a significant remaking of FMBC, because as the evidence clearly demonstrates, the Board of Directors have been appointed, not elected during the entire history of FMBC. Furthermore, not only must they be a member who has accepted the Right Hand of Fellowship, they must be committed to the future of the Church by affirming their desire for continued membership.

The evidence which has been presented to-date clearly demonstrates that, at no time in the history of FMBC,

have decisions been made in this manner nor would being 18 and having your name included on a telephone directory entitled you to a voice in FMBC decisions or a right to a seat on the Board of Directors.

In addition, using the telephone directory fails to take into account changes in membership. New members have joined FMBC since the October 2003 ruling and the November 2003 meeting of the membership. By using a telephone directory to establish the membership list, the Special Master is denying these individuals the right to vote. The Report fails to take into account that FMBC is an ecclesiastical organization whose leadership focus is geared toward spiritual matters. While FMBC is a not-for-profit under R.S.Mo. § 355, this designation does not mean that FMBC, at any time, ceased operating as anything but a church. All decisions at FMBC were made on the basis of FMBC's clearly stated evangelical mission, and its leaders primary charge was to further that goal. Plaintiffs have taken the view that the goal of the leaders should have been preserving wealth instead of spreading the Gospel of the Word. A voice and the privilege to be a leader of FMBC have always been limited to those individuals who have demonstrated their adherence with Baptist principles.

Many families participate in worship service and other activities (i.e. "active families") but never become a member. This is typical in most churches. FMBC is not an exclusive country club where only members may attend, rather, FMBC encouraged families who were not members to attend and participate in the hope that the family would come into the faith and become members of FMBC. This is the essence of its mission: to spread the Gospel of the Word. Active families that were not members were invited to church business meetings, including the year end

annual meeting, so that they could stay apprised of church activities. Many active non-member families even made regular financial donations to FMBC. FMBC made every reasonable effort to maintain communication with these families in furtherance of FMBC's ministry.

The Special Master's Report assumes that no FMBC Board has been elected for 20 years. Accepting, for the moment, that this is correct, then the proper membership list must go back to some unknown point 20 or more years ago, with only those members still alive being granted a vote. This, of course, is an absurd conclusion. FMBC has had leadership over the past 20 years. ***While a one man, one vote election may not have occurred,*** the Leaders were known to the membership and the membership recognized their ability to make decisions for FMBC, including issues of membership. The Pastor and Deacons are the group whom the Special Master should have consulted to determine membership.

<u>An election is improper, given the Court of Appeals mandate calling for a meeting</u>

The Court of Appeals remanded this matter on the basis that the McDowell Group had not proven they were the elected Board, and remanded to the trial court so the trial court can call a meeting so that a board can be elected. The only issue before the Court of Appeals was whether the trial court had the authority to issue Summary Judgment as to who were the rightful Leaders. The only question originally before the trial court was whether the attempted coup was valid and whether those previously in control should turn control over to the Leaders of the attempted coup. The Court of Appeals acknowledged who had control of FMBC but refused to turn assets of FMBC

over to anyone but a "duly elected Board". Those in control, the Pastor and Deacons as acknowledged by all parties including the Court, must decide the issue of who is a member and, thus, who can vote in an election. This is more in line with the Court of Appeals mandate that using a telephone directory to establish membership.

FMBC has already held an election in November 2003, satisfying the Court of Appeals Mandate

In October 2003, the court rightly reinstated control of FMBC's assets to the then board members and officers. The Court's judgment was appealed; however the judgment was not stayed, and FMBC continued to exist and function. FMBC proceeded to call a general meeting of the membership in November 2003. Bylaws were adopted memorializing FMBC's historical rules of governance and new board members and officers were appointed. Any requirement by the appellate court to hold a meeting has

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**IN THE CIRCUIT COURT OF
THE COUNTY OF ST. LOUIS
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI**

FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN, aka FIRST BAPTIST CHURCH OF BALLWIN, Plaintiff, v. RICHARD ROLLINS, et al., Defendants.	Cause No. 02CC-002033(G) Division 39

MEMORANDUM OF DEFENDANTS REGARDING VOTING PROCEDURES

(Filed Jun. 3, 2005)

COME NOW Defendants, by and through their attorneys of record, and for their Memorandum regarding voting procedures, state as follows:

I

BACKGROUND

First Missionary Baptist Church (hereinafter "FMBC") is one of the oldest, free African American Baptist churches in the St. Louis area. FMBC was founded by a group of former slaves who acquired property in West St. Louis County from a land owner. The property was owned by and served as the location of the church known as FMBC for more than 100 years. At that time, the property was in a rural area, west of the City of St. Louis, in what

is now a municipality in St. Louis County, Ballwin, Missouri. Over time, the real estate grew progressively more valuable as Ballwin changed from a farming community to the more affluent suburb it has become today.

The church known as FMBC filed under § 355 of the Revised Missouri Statutes as a not-for-profit public benefit religious organization in the early 1960's. FMBC continues as a religious organization today and has traditionally been affiliated with the National Baptist Convention, although it is not a full member of this convention. As time passed, the Church went through various transitions and the membership count fluctuated. When Richard Rollins became the Senior Pastor of FMBC in the 1980's, there were approximately 15 members. The membership grew considerably under Pastor Rollins' leadership, and by the late 1990's, FMBC served more than 100 families. Traditionally, FMBC has not been governed by a one member, one vote system but, rather, the ultimate authority for making decisions rests in the Pastor and Deacons. The membership at large was kept informed and, from time to time, the membership's concurrence was requested for certain decisions at the leadership's discretion. This was accomplished by a simple proposal and acceptance procedure to the congregation. This form of governance was adopted by FMBC, and many other churches, based on the ecclesiastical leaders' sound interpretation of biblical principles. The Bible, referred to as the "Holy Scriptures", was adopted in its entirety as bylaws, rules of governance, and the Christian way of life. Attached at *Tab "1"* is a more comprehensive FMBC history.

More recently, the area around the original Church property (302 E. Main, Ballwin, Missouri) began to change, becoming more commercial in nature. Eventually,

a developer who wished to build a shopping center inquired about purchasing the property, and the Church real estate was eventually sold to make room for the Ballwin Towne Center after over two years of negotiations led by Richard Rollins and the City of Ballwin's grant of approval to the developer to exercise eminent domain on the city's behalf. This transaction netted FMBC a number of benefits, along with some unforeseen problems. The benefits included a considerable amount of money and replacement real estate. Some of the money was used to purchase a building which could be used temporarily by FMBC. The net was approximately three times the appraised value of the church's property and improvements including four (4) acres of property rather than the 1¾ acres previously owned. The Church, under Pastor Rollins and the Deacons' leadership, accepted the offer in the best interest of the Church moving forward, rather than fighting the eminent domain issue in court. The problems began almost immediately, and proved that the old, familiar saying is correct; "Love of money is the root of all evil".

A group of Church members led by Ken Worsham, Alan Clayton and Ernest Schell (the "Dissident Group") began actions to usurp the authority of the current leadership in an attempt to replace and restructure Church leadership and guide the Church along a path of their choosing. They began their actions under the disguise of asking numerous questions about the past function of the Church and its financial matters, in particular, the accounting of the Church. The impetus, of course, was the fact that for the first time in its history, the Church actually had money in its accounts and the above named parties desired to assert control over these assets. The Dissident Group, rather than following the course of the

questions and putting the issues before the congregation, began to make baseless accusations, all in an effort to gain control of the Church. These questions brought attention to a simple accounting system that was typical of a small religious organization the size of FMBC, with annual income of much less than $250,000.00. FMBC, as many small churches do, operated out of a balanced checkbook and bank statements, and a simple ledger for any employment related taxes. However, given the additional income and asset base resulting from the sale of the Church real estate, there was a need for a more formalized accounting system if FMBC was going to continue to function with the increased budget now at its disposal and with a planned new building.

The leadership of FMBC, led by Pastor Richard Rollins, attempted to work with the Schell group to work through the various issues which arose regarding the accounting system, but were met with resistance from the Schell group unless they simply acceded to all of their demands, essentially relinquishing control of FMBC to the Dissident Group. Members of the Church, including members of the Schell group, were given full access to the financial records of the Church, and the Church solicited input and recommendations relating to Church finances going forward. A new and more formal accounting procedure and budget was proposed by the Church leadership, which included input from the Schell group. The new accounting procedure and budget was generally accepted by all involved, but it became very apparent that the Schell group wanted to assert complete control over the financial decisions of the Church, thereby usurping the authority of the current leadership headed by Pastor Rollins. Simply put, the Schell group was unwilling to

accept any answer or explanation if it did not fit into their preconceived notion of what the Rollins group had previously done and if the answer didn't completely divest the current leadership from all financial authority and spiritual leadership in FMBC.

Their preconceived notion, as alleged in the instant matter, and, in the concurrent matter pending in Division 31 of the St. Louis County Circuit Court, was that Pastor Rollins and his leadership group had, acting together, used the assets of FMBC to benefit themselves and increase their personal wealth. This preconceived notion was alleged in the instant matter, after a full accounting of the assets was performed, as "suspicious expenditures". This allegation and all other allegations were dismissed *with prejudice* by the trial court. The issue of leadership was the only issue appealed by the plaintiffs, even though some of them were members of the leadership group.

The absolute unwillingness of the Schell group to participate in any discussions with the Rollins group or have any patience in waiting on answers culminated in the Schell group calling a secret meeting to which they invited only "like-minded" individuals. Attached at *Tab "2"* is an Agenda from this meeting, along with a rough memorialization of the events. At this meeting and, after making unsupported allegations against Pastor Rollins and without providing him or any of his leadership team the opportunity to be heard, a vote was held by those "like minded" individuals invited to the meeting purporting to oust Pastor Rollins and replace the entire leadership team. In effect, the Schell group had staged a coup of FMBC and had taken the decisions regarding FMBC away from the Church. Setting aside the fact that this meeting was in direct contravention of the rules of church governance of

FMBC, and further contrary to the laws of the state of Missouri which caused Judge Clifford and the Court of Appeals to rule it improper; the meeting and the subsequent actions taken were in clear violation, most importantly, of the laws of God as set forth in the Bible, the very essence of what it means to be a Baptist.

The instant case was filed soon after the "like-minded" meeting of April 13, 2002 when it became apparent to the Schell group that the Rollins group was not simply going to walk away and allow them to take over FMBC. They wanted control of all assets of FMBC and were unwilling to accept the resistance they faced from the Rollins group in achieving this goal. Since that time, both sides have been engaged in non-stop litigation. In furtherance of the coup attempt, the Schell group had names changed on Church bank accounts by presenting to bank officers unofficial and unauthorized letters and documents.

Even after Plaintiffs' attempted coup in April 2002, the Rollins group attempted, on numerous occasions, to reach out to the Schell group and repair the differences between them in an effort to renew the community of faith of FMBC. Attached at *Tab "3"* is an exemplar of communications sent to all members of FMBC after the April 2002 meeting. These attempts at reconciliation were met with silence. Eventually, the Rollins group notified the members of the Schell group and new Baptist churches and other required organizations that the members of the Schell group were no longer members of FMBC. Attached at *Tab "4"* is an exemplar of communications to the Schell group and other organizations regarding membership.

Characteristically, this did not stop the Schell group from marching toward their ultimate goal of control and/or

destruction of FMBC and Richard Rollins. They filed documents with the Missouri Secretary of State proclaiming themselves the leaders, unilaterally changed signatories of FMBC bank accounts, and even transferred over $100,000.00 of FMBC money around in an attempt to avoid its detection. At one point, this money was purportedly given to the Schell group's attorney until the attorney was notified about the cashier's check drafted in his name. This check was subsequently deposited into a separate account bearing the name of Remnant Baptist Church, a fictitious entity name filed by the Schell group with the Missouri Secretary of State. There is a contempt hearing pending in the instant matter regarding this very issue, resulting in the Dissident Group voluntarily depositing the money into the Registry of the Court. This demonstrates the inability of the Schell group to conduct themselves according to the rules of the Church and the word of God as set forth in the Bible, and demonstrates their willingness to do anything necessary to achieve their goals, whether legal or not.

Indeed, the proceedings in Division 31 have netted the Dissident Group with volumes of discovery, including multiple subpoenas, multiple depositions and multiple documents requests, none of which have netted the Dissident Group any information to which it was not previously aware. There are, in essence, two primary elements to the ongoing litigation. First, the Schell group has alleged that the Rollins group used their positions at FMBC to increase their personal wealth, to the detriment of FMBC. This part of the case is exclusively in front of Judge Crancer as there are no such allegations in this case. The other issue, of primary concern in this case, is conducting an annual meeting and election of a Board of Directors consistent

with the Court of Appeals' reversal of the trial courts declaratory order regarding the rightful leaders and subsequent remand so that the trial court can order a meeting. This seemingly simple issue is, in fact, not so simple and includes a number of considerations that are extremely important for the determination of the issues before the Special Master.

II

ARGUMENT

The above recitation of the facts is pertinent as it reveals how the parties arrived at this place in the litigation and provides context for the issues that are a natural result of the primary issue, the vote. These issues include, in order of importance, who, amongst the membership of the Church can make the determination of the voter roles of FMBC; who is a valid member, entitled to a vote; who is a valid candidate, qualified to hold office; and how will the election be conducted in accordance with the traditional FMBC model and the relevant statutory provisions for religious organizations.

Determining who is entitled or allowed to review the purported members of FMBC and determine their qualifications to vote is important in this context as a result of FMBC's status as a church. In particular, churches embroiled in legal battles are provided certain protections by the U.S. Constitution, specifically, the 1st Amendment as applied to the state by the 14th Amendment. The 1st Amendment, of course, provides for the separation of church and state. In this context, it means that FMBC and not the State of Missouri, through the Court or a Special Master acting on behalf of the Court, is permitted to

determine who amongst the alleged members of FMBC is allowed to vote or even if a vote is proper. By its very nature, this is a determination that speaks to the core values of the Church and is not a determination that can be made by a secular third party.

This determination can only be made by the last recognized leadership team of FMBC and ultimately the Church's highest ecclesiastical authority, Pastor Rollins. Attached at *Tab "5"* is the last Registration Report filed with the State of Missouri before the events in April 2002 along with prior Registration Reports evidencing the historical pattern. It is important to begin this analysis before the April 2002 "like-minded" meeting to ensure that Plaintiffs' actions, at that time, are not simply ignored and that Plaintiffs' actions are minimized in prejudicing the outcome of the instant matter. To be clear, voting from the membership at large for church leadership is contrary to biblical principals which are the very core of FMBC, and contrary to the Church's historical rules of governance. Further, it is undisputed that the only officers of the church are the Pastor and the Deacons as supported by the National Baptist Convention's Articles of Faith.

With the above said, however, given that voting is the context of the present discussion, voter eligibility for the Board of Directors of FMBC is a matter which must take into account each individual member's actions in relation to FMBC, their fellow Church members, and their conduct in this litigation. These are important considerations because the members will be voting on the Board of Directors for FMBC and their status as an upstanding member of FMBC must be considered. With all due respect to both the Court and the Special Master, this is a determination which resides *exclusively* in the province of the

last recognized leadership team of FMBC, particularly the highest ecclesiastical authority of the Church, the Pastor and the Deacons with the highest authority resting in the Pastor. Had Plaintiffs bothered to go about making the changes they wanted in the first analysis in the manner in accordance with the Church's rules of governance of FMBC through its then existing leaders, the leaders would have been given an opportunity to determine the issues that are now before the Special Master. To now provide otherwise would confirm Plaintiffs' actions as acceptable and would encourage others in a similar matter. Simply put, this Court cannot allow Plaintiffs to gain privileges as a result of their improper conduct. Indeed, at least one family who are active members of the Plaintiffs' group, the Worsham family, had not been extended the Right Hand of Fellowship at the time of the April 2002 meeting and would not have been allowed to participate in any FMBC decisions. Attached at *Tab "6"* is the letter informing the Worsham family when they would be extended the Right Hand of Fellowship.

The "Right Hand of Fellowship" and the extending or withdrawing thereof is a public testimony made by the Pastor and the Deacons of the Church relating to the acceptance or rejection of an individual to be a member of the fold (a member of the local body of Christ – Local fellowship or Church such as FMBC). It is a term used by the Baptist Christian Faith to refer to a biblical principle. The right hand of fellowship is only extended to a new believer (new to the Christian Faith) after there has been a public testimony of faith and a public Baptism and the individual publicly testifies that they are willing to be governed by the rules and the leadership of the local Baptist Church. If these public testimonies are examined

and accepted by the Pastor and the Deacons, then a motion is made by the Pastor and Deacons who recommend that the right hand of fellowship be extended and that the individual becomes a member of the local body with all privileges of any other member. At a subsequent worship service the individual is called forward and the Pastor and Deacons extend their rights hands, shake their hands and physically embrace them before the congregation. The calling forward is ceremonial and again done as a public testimony. Similarly if a person was previously a member at another Baptist/Christian Congregation everything would be done the same way except for possibly the Baptism.

The "Right Hand of Fellowship" can also be withdrawn for various reasons as determined by the Pastor and Deacons. Again, this is terminology utilized to refer to a biblical principle of discipline in the church. When withdrawn, a public statement is made by the Pastor and the Deacons before the congregation. The reasons for withdrawal may or may not be expounded upon. When withdrawn, all privileges as a member are removed and the congregation is instructed to treat the individual as any other "publican" or "pagan" to utilize biblical vernacular. This simply means that the individual is to be treated as any common non-believer of the Christian faith and as any other non-member. The "Right Hand of Fellowship" is not re-extended until the individual has publicly repented and changed their ways and requests to re-enter the fold and this public testimony has been accepted by the Pastor and the Deacons.

Only one entity is able to make the decision as to whether each purported FMBC member has received the Right Hand of Fellowship, is, in fact, a member and is a

member entitled to vote. That entity is the leadership team of FMBC, particularly the Pastor and the Deacons. The Court of Appeals even affirmed the fact of who was actually leading the church and the plaintiffs in the instant case have conceded this point. Neither the Court nor the Special Master is qualified, because of the nature of the decision, to decide who is or who isn't a good Baptist and one who qualifies under Baptist theology to cast a vote in FMBC and to find otherwise would constitute an invasion by the State into the rules of the Church.

The United States Supreme Court, in fact, provides that, "whenever the questions of *discipline, or of faith, or ecclesiastical role, custom, or law have been* decided by the highest church judicatures to which the matter has been carried, the legal tribunals *must* accept such decisions as final, and as binding on them, in their application to the case before them." *Siberian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Milivojevich, et al.*, 426 U.S. 696 (1976). In other words, when questions directly relating to ecclesiastical rules are present, the court must accept the decision of the ecclesiastical authority, the church, on that topic. This acceptance and adoption must be made by the Court regardless of how arbitrary the ecclesiastical decision may appear, and secular standards cannot be applied. Any other outcome, would allow the court to substitute its judgment on purely religious matters for that of the church. This is the very activity the Framers sought to avoid when drafting the 1st Amendment as no court can ever make a purely religious decision.

In the event the Court, based on insufficient evidence, is unable to determine the Church leaders before April 2002, logic would provide the Court is no better position to

determine who can or who cannot be a board member at this time. The very nature of this issue, leadership of a church, must give the Court pause, before appointing a leader, allowing the conclusion that only FMBC's highest ecclesiastical authority is in a position to determine Church leadership. Indeed, even with this information, the only relevant inquiry would be the decision of FMBC leadership, as the law is clear that Courts are to refrain from questioning matters of ecclesiastical decisionmaking. Simply stated, FMBC, as a Church with over 100 years of history, 20 of which have been ably led by Pastor Richard Rollins, should not have its major decisions made by any Court.

The Dissident Group's position fails to acknowledge one simple truth of their membership in FMBC; it is and always has been completely voluntary. None of the parties in this matter have any traditional ownership interest in FMBC, but rather are shepards of FMBC, as the Bible provides. The Dissident Group's actions make it clear that they view FMBC as theirs, an entity which they possess.

Given this clear mandate on the conduct of a *religious* election, the second and third issues become much more manageable as the leadership team will determine those issues, under the supervision of the Special Master. The Rollins team proposes a series of meetings, held with the leadership team (Pastor and Deacons) and the Special Master, wherein each member's activities will be considered and eligibility to vote will be determined.

The Schell group, by their actions in April 2002 and attempted takeover of FMBC and their activities since that time have, in effect, disqualified themselves from the ability to either vote for others or to present themselves as

candidates for officer positions. It is a violation of basic, fundamental Baptist principles to commence litigation in the secular courts against other members of your congregation. The Baptist faith requires conflicts to be worked out *amongst* the members of the congregation and, if needed, another Baptist minister should be brought in to help the parties reach a resolution. Under no circumstances, ever, should the members of the Baptist faith turn their conflicts over to the Secular Court system. For this transgression of Baptist tenets, lack of continued fellowship, forming a separate church entity (Remnant Baptist Church) and other transgressions including those outlined above, the Schell group have, by their own actions, divested themselves of membership in FMBC.

The same issues as outlined above are applicable for determining who is eligible to be a board member.

Finally, the conduct of the election is quite simple. The Special Master should order an election for the Board of Directors, taking into account the above parameters at a neutral site. Proper notice should be given to all concerned. All qualified voters should cast their ballots in a private, confidential manner. The Board of Directors will then be empowered to resume control over FMBC.

All members of the Rollins group will make themselves available, at the request of the Special Master, for any follow up communications. Richard Rollins is an ordained Baptist minister who has studied theology and can provide insight into the Baptist theology, should the Special Master require same. Additionally, any document or other information the Special Master should require shall be provided.

WHEREFORE, Defendants submit this memorandum in support of the voting procedures of FMBC.

Respectfully submitted,

JENKINS & KLING, P.C.

By: /s/ Roger W. Pecha

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Attorneys for Defendants

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS TWENTY-FIRST JUDICIAL CIRCUIT STATE OF MISSOURI

FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN, aka FIRST BAPTIST CHURCH OF BALLWIN, by and through its Board of Trustees,		
Plaintiff,	Cause No.	02CC-002033
v.	Division	39
RICHARD ROLLINS, PRESS MCDOWELL, JOHN HIBBLER, LOYSE CLAY and CHARLET CLAY, et al.,		
Defendants,		
RICHARD ROLLINS, PRESS MCDOWELL, JOHN HIBBLER, LOYSE CLAY and CHARLET CLAY, derivatively, on behalf of the First Missionary Baptist Church of Ballwin, a/k/a First Baptist Church of Ballwin		
Third Party Plaintiffs,		
v.		
ANTHONY BARNES, NORMA CLAYTON, MARVA GAYLOR, JAMES SHEETS, KATHY SIMMONS, GARY FIELDS, ERNEST SCHELL, GEORGE FULGHAM, LEONARD WHITE, DAVID LYONS, and KENNETH WORSHAM		
Third Party Defendants.		

RESPONSE TO MOVANTS' MOTION FOR THE COURT TO ORDER A MEETING AND ELECTION OF DIRECTORS

(Filed April 8, 2005)

COME NOW Richard Rollins, Press McDowell, John Hibbler, Loyse Clay, and Charlet Clay ("Respondents") and, for their Response to Movants' Motion for the Court to Order a Meeting and Election of Directors, state as follows:

1. As Movants accurately indicate, this matter is now before the Court as a result of the mandate of the Court of Appeals in Cause No. ED83880.

2. The Court of Appeals specifically referenced R.S.Mo. §§ 355.081.1 and 355.251.1(1) in the section of the opinion remanding this case to Division 39 so that the Court can call a meeting to elect a board of directors.

3. Section 355.081.1 provides that the Court, after being requested to do so by members of a not-for-profit corporation, may order a meeting of a corporation formed under § 355 "in such a manner as the court finds fair and equitable under the circumstances."

4. The instant matter presents a number of issues which the Court must consider when ruling on Movants' instant request including case law specifically dealing with the manner and method of church governance and, more specifically, the ability of Courts to interject its judgment into the manner in which a church should be governed, the proper parties to determine membership in FMBC, and the actions of Movants in the instant matter.

5. If the election is ordered as Movants request, the separation of Church and State as set forth in the 1st Amendment will be violated.

6. The leading case is *Serbian Eastern Orthodox Diocese for the United States & Canada, et al. v. Milivojevich, et al.,* 426 U.S. 696 (1976). In *Milivojevich,* the United States Supreme Court held, "Even when rival church factions seek resolution of a church property dispute in the civil courts, there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. Because of this danger, *"the First Amendment severely circumscribes the role that circuit courts may apply in resolving church property disputes." Id.*, citing *Presbyterian Church v. Hull Church,* 393 U.S. 440, 449 (1969) [Emphasis added].

7. The Supreme Court went on further to state, "whether the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them." *Id.*, citing *Watson v. Jones,* 13 Wall. 679 (1872).

8. More simply stated, Courts are prohibited by the 1st Amendment from interfering in church governance.

9. Movants, in their instant Motion seeking the court to order a meeting and election of directors are, in essence, requesting that all members of First Missionary Baptist Church ("FMBC"), or more accurately, all members of FMBC before the judicially declared invalid meeting of April 13, 2002, which is the genesis of the instant litigation and a companion case presently pending in Division

31, captioned *Schell, et al. v. Rollins, et al.,* Cause No. 04CC-000058, be permitted to vote in that election.

10. Had Movants properly proceeded with a meeting in April 2002, this may not have been the result and certainly cannot be the result at this time.

11. In a Baptist church, "its only scriptural officers are Bishops, Pastors and Deacons whose Qualifications, claims and duties are defined in the Epistles to Timothy and Titus." See National Baptist Convention (with whom FMBC is traditionally affiliated) Articles of Faith, XIII attached hereto and incorporated herein as *Exhibit "A".* The Baptist theology does not provide for a congregational form of church governance in the sense of one member, one vote for church governance, but is only congregational in the sense of autonomy as an operating entity and is similar in nature to the Catholic church, being based on an ecclesiastical form of church governance, which, by its nature does not afford its members with a vote in church governance. Rather, like the Catholic, church members of a Baptist church are not empowered to vote by their church's path, but rather can vote with the pocketbook or their attendance and membership.

12. In the case of FMBC, this highest ecclesiastical authority is Pastor Richard Rollins, as it has been since Pastor Rollins became the Pastor in the early 80s. The Deacons, prior to the April 2002 invalid meeting as held by the Court, are Press McDowell, John Hibbler, Loyse Clay and Ernest Schell. Together, these five gentlemen represent the ecclesiastical authority of FMBC whose determination of the voters' role must not be disturbed by the Court.

13. Should the Court order an election which allows all members to vote, it will be, in effect, remaking FMBC

into an entity not supported by the Baptist faith. The 1st Amendment prohibits the Court from taking this dramatic step and is in no way permitted under R.S.Mo. § 355.726.2.

14. Movants are now asking the Court to ignore this basic precept of their faith, substitute its judgment for the Pastor and Deacons and give them another opportunity to have an election that is simply not permitted under Baptist religious doctrine. In other words, Movants are asking the Court to grant them a privilege they are not entitled to, and simply forget their destructive actions vis-a-vis, the April 12, 2002 election.

15. An election, if ordered by this Court based on the Court of Appeals mandate, though not appropriate, can only be implemented with the following individuals who are parties to this lawsuit and are the only parties as of the last annual meeting, prior to this lawsuit, who should be allowed to decide who will vote on the new board of directors and who is qualified to serve on the board: Pastor Richard Rollins and Deacons Press McDowell, John Hibbler, Loyse Clay and Ernest Schell, as the Baptist faith requires, the ecclesiastical authority of FMBC and the only people qualified to determine who has maintained themselves as a member in good standing of FMBC.

16. This methodology is actually the appropriate manner to conduct any vote per R.S.Mo. § 355.186. R.S.Mo. § 355.186 provides that all members have the right to vote unless the articles or by laws establish classes of membership with different rights and obligations. R.S.Mo. § 355.211 also provides that upon a fair and reasonable proceeding members of a church may be expelled or suspended, upon determination of the organization. This acknowledges that

FMBC has the authority to determine membership matters.

17. The ecclesiastical authority of FMBC must decide what constitutes a member in good standing. An order requiring the Pastor and Deacons to create a voter's role is authorized and, in fact, required by R.S.Mo. § 355 et. seq., and the By-Laws of FMBC. Indeed, R.S.Mo. § 355.326.1 provides that a board may be appointed by a group of leaders/delegates. Further, §§ 355.211 and 355.611 provide the ability of a church's expulsion of a member. This statutory provision clearly recognizes the church's authority to decide matters relating to membership and church governance. If the Court were to rule in favor of the Movants, the Court would clearly be in opposition to the intent of this statutory provision. Church governance is clearly not a decision to be made by the Court, but is to be made by the ecclesiastical authority of the church.

18. The only fair and equitable manner under the circumstances is to follow the ecclesiastical customs of FMBC and allow the ecclesiastical authorities to determine which members are entitled to vote. Just as this Court would not properly determine what constitutes a Catholic, Jew or Muslim in good standing, neither is this Court.

19. This Court is neither qualified nor empowered to question the decision of the highest ecclesiastical authority, just as the State of Illinois court was found to not be qualified nor empowered to question the decision of the Eastern Orthodox Church in *Milivojevich*. Further this Court is neither qualified nor empowered to decide who is a member in good standing or who is qualified to serve on

the board and there is no higher ecclesiastical in the Baptist church than the Pastor.

20. Movants' request for an election, while arguably proper under R.S.Mo. § 355, does not provide an accurate view to this Court as to who is actually qualified to vote. The Court is not the proper party to make this determination, or to review the decision previously made by the highest ecclesiastical authority of FMBC or to review a decision made at this time by the highest ecclesiastical authority. Any court order other than one requiring the Pastor and Deacons to establish a role of voters for an election will violate the separation of church as envisioned in the 1st Amendment, substituting this Court's judgment for that of the ecclesiastical authority of FMBC.

WHEREFORE, Respondents pray that this Court deny Movants' Motion for the Court to Order a Meeting and Election of Directors, and for such other and further orders as this Court deems just and proper in the premises.

Respectfully submitted,

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